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**Dispute Resolution in Muslim Minority Communities:
The Theory, Practice, and Potential of Islamic Mediation**

by

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Abstract

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Mediation is a type of dispute resolution in which a third party intervenes to help disputing parties reach a mutually satisfactory agreement. In recent years, individuals and organizations have begun advertising Islamic mediation services. The development of this field has important implications for Muslims living in Western countries, as Muslim minority communities have long sought ways to resolve disputes according to their personal religious beliefs. Avenues for family dispute resolution—including the civil courts, informal Islamic courts, family counseling, and informal mediation by an imam—each have distinct drawbacks. Professional Islamic mediation could fill a significant gap in services. Although some work has been done on theoretical models of Islamic conflict resolution, little information exists on the current practice of professional Islamic mediation in Muslim minority communities. This study addresses this gap in knowledge through case studies of practicing Islamic mediators. Results indicate wide

variation in the field in terms of how practitioners themselves define Islamic mediation. There were also distinct differences in the role the mediators played in relation to the disputing parties, what types of cases they mediated, and how they organized and funded their services. The lack of standardization in the field may be a positive thing, however, as different services may fill different needs in Muslim communities.

Table of Contents

List of Tables	viii
Chapter 1: Introduction	1
Chapter 2: Background and Literature Review	6
Introduction.....	6
Culture and Conflict Resolution.....	6
The Western Mediation Process: An Overview	8
Effectiveness of the Western Mediation Model in Non-Western Cultures	12
A Comparison of Western and Islamic Approaches to Dispute Resolution	13
Peace and Conflict Resolution in Islamic Sources.....	15
Dispute Resolution in Islamic Societies	18
Dispute Resolution in Muslim Minority Communities	22
Civil Courts	26
Islamic Arbitration through Informal Courts	29
Family Counseling.....	32
The Role of Imams in Informal Mediation	33
Professional Islamic Mediation	36
Conclusion	39
Chapter 3: Research Methods	40
Recruitment of Participants.....	40
The Interview Process	42
Working with Minority Participants.....	44
Chapter 4: Results and Analysis	48
Toward a Model of Islamic Mediation	48
The Abdalla/GSISS Model in Practice	49
Challenges to Implementation of the Abdalla/GSISS Model	53

Case 1: An Islamic Mediation/Arbitration Service	54
Case 2: Muslim Mediation Service	58
Case 3: An American Muslim Lawyer	63
Analysis	65
What Makes the Mediation Process “Islamic”	65
The Role of the Mediator	67
Cultural Considerations.....	68
Types of Cases Mediated	68
Organization and Funding.....	69
Chapter 5: Conclusion	70
Appendix A: Sample Interview Schedule	73
Appendix B: Mediation Scenario for Interview	74
References	75

List of Tables

Table 1: Large Muslim Minority Populations	22
Table 2: Mediation Techniques for Different Types of Conflict.....	51

Chapter 1: Introduction

In the past few decades, mediation has gained popularity in many Western countries as a cost-effective and confidential means of resolving disputes outside the court system. In recent years, organizations and individuals in the U.S. and other Western countries have begun to advertise professional Islamic mediation services. Although Islamic societies have a tradition of informal mediation of disputes based on social norms and religious injunction, surprisingly little research has been conducted on the practice of Islamic mediation in Western countries. In fact, there is currently no clear definition of what constitutes “Islamic mediation” in the practical sense. It may comprise the direct application of Islamic law from one of the major schools of jurisprudence, or it may simply be a process of conciliation grounded in general principles of justice and equality that are found in the Qur’an and Sunna.¹ Some scholars have worked to create a standard Islamic method for resolving interpersonal conflicts, though we do not know to what extent such principles are actually employed in the field. It is important to explore the nascent field of professional dispute resolution in Muslim minority communities to gain a better idea of current practices and to identify areas that would benefit from further study.

The development of the field of Islamic mediation has important implications for Muslims living in Western countries. Muslim minority communities have long sought ways to resolve disputes outside the secular court system.² For Muslims living in the

¹ The Sunna is “the body of Islamic custom and practice based on Muhammad's words and deeds.” *Merriam-Webster Online Dictionary*, s.v. “Sunna,” <http://www.merriam-webster.com/dictionary/sunna> (accessed August 9, 2009).

² Ihsan Yilmaz, “Muslim Alternative Dispute Resolution and Neo-*Ijtihad* in England,” *Alternatives* 2(1) (2003):117-139. Laureve Blackstone, “Courting Islam: Practical Alternatives to a Muslim Family Court in Ontario,” *Brooklyn Journal of International Law* 31(1):207-251.

West, Islamic mediation might be good alternative for resolving disputes according to their own religious values and cultural norms. Scholars have asserted that the North American/Western approach to conflict resolution is not universally applicable due to underlying cultural assumptions, and it is possible that some form of Islamic mediation would be more effective in addressing the needs of Muslim disputants than the Western approach.³ A study conducted by the U.S. nonprofit organization Karamah: Muslim Women Lawyers for Human Rights indicates a strong desire among U.S. Muslims for access to professional Islamic mediation services, particularly for resolving family and marital disputes.⁴

There has been some scholarly discussion of the Islamic bases of peace and conflict resolution principles and processes, and one scholar has proposed a theoretical Islamic mediation model based broadly on Islamic principles. However, there is a significant gap in knowledge regarding the professional practice of Islamic mediation in Western countries, which this study seeks to fill. Specifically, I explore what makes the process Islamic in the eyes of the mediators, how Islamic law or principles are incorporated into the process, what role mediators play in relation to the disputants, and what techniques mediators use to guide the process.

Chapter 2 of this thesis presents relevant background information and a review of scholarly literature on dispute resolution as it is practiced in the West and in Islamic societies. Scholars have long noted that the Western model may not be appropriate for

³ John Paul Lederach. "Cultural Assumptions of the North American Model of Mediation: From a Latin American Perspective." *Conflict Resolution Notes* 4(3) (1987):23-25. Paul Salem. "A Critique of Western Conflict Resolution from a non-Western Perspective." *Conflict Resolution in the Arab World*. Ed. Paul Salem. Beirut: Lebanon: American University of Beirut, 1997.

⁴ Amr Abdalla, "Views of Muslim Americans: Excerpts from a Research Study of Mosque Members in the Washington, D.C. Metropolitan Area." Workshop on Islamic Law: Conflict Resolution. 2004 Annual Meeting of the Association of American Law Schools, January 2 – January 6, 2004, Atlanta Georgia. <<http://www.aals.org/am2004/islamiclaw/conflictresolution.htm>>

use in non-Western settings. I explore some of the key differences between Islamic and Western approaches to dispute resolution and why some scholars think that the Western model is not necessarily the most effective with Muslim disputants. I also provide an overview of common problems faced by Muslims living in minority communities and highlight the perceived need for dispute resolution services in these communities. I review the avenues for dispute resolution that are currently available to Muslims, including civil courts, Islamic arbitration and informal courts, professional counseling, and working with an imam.⁵ Each of these approaches has drawbacks, leaving gaps in service that professional Islamic mediation could potentially fill. In this chapter, I review the limited research conducted on professional dispute resolution services in Muslim communities and highlight the need for further work in this area.

Chapter 3 is a discussion of the research methods used in this study. Because the primary purpose of the research is to identify current practice in professional dispute resolution in Muslim communities, I conducted semi-structured interviews with practicing professionals. The first part of the interviews consisted of a general discussion of their practice, centered around key themes, such as the type of services they offered and what role religion plays in their work. Prior to the interview, I sent participants a hypothetical scenario depicting a dispute between a husband and wife. In the second part of the interview I ask them to respond to that scenario, describing how they would approach the dispute if the couple came to their office asking for assistance. In addition to describing the interview protocol, this chapter also addresses key issues regarding research in minority communities and describes my “active interviewing” approach, in

⁵ An imam is “the prayer leader of a mosque.” *Merriam-Webster Online Dictionary*, s.v. “Imam,” <http://www.merriam-webster.com/dictionary/imam> (accessed August 9, 2009).

which I attempted to engage participants in a discussion rather than treating them as passive providers of data.

Chapter 4 presents the results of the study. First, I provide an in-depth description of a model for Islamic dispute resolution proposed by a Muslim scholar in the U.S., Amr Abdalla. This is the most clearly-developed model of its kind and has the potential to serve as an important foundation for future developments in the field of mediation. Based on an interview with Abdalla, I describe the proposed model in detail, and highlight Abdalla's experiences doing dispute resolution trainings for Muslim communities in the U.S. The case studies that follow illustrate current practices in the field of professional Islamic mediation. Each case study focuses on a particular practitioner or organization. The first case is a mediator/arbitrator based in Canada with extensive knowledge of Islamic law and who is considered qualified to issue rulings on family law cases. The second case describes the Muslim Mediation Service (MMS), a London organization that provides free mediation services to Muslim communities. MMS spun off from a secular mediation nonprofit organization and uses the same mediation model, but will sometimes reference Islamic values during the process. The last case is an American Muslim lawyer who has worked primarily with Muslim clients in his area on family dispute cases. The subject of this final case study is not an Islamic mediator, but rather a mediator who is Muslim and who serves Muslim clients. His case is included in this study to provide a contrast and highlight what makes the mediation process in the other cases "Islamic."

The diversity of the services offered and the divergent interpretations of what the term "mediation" entails indicates that Islamic mediation is not a well-defined field, nor do clear standards of practice exist to guide practitioners. However, a lack of uniformity is not necessarily a negative thing, as different services may fill different needs within

Muslim communities. Furthermore, there are differences among the practitioners regarding what makes their work “Islamic.”

Chapter 2: Background and Literature Review

INTRODUCTION

The field of conflict resolution in recent decades has moved away from a Western-centric stance to acknowledge that the Western model of interpersonal dispute resolution is not always adequate for use in other cultural contexts. Scholars have argued that many assumptions of the Western model limit its effectiveness in dispute resolution among Muslims and have called for an explicitly Islamic framework for resolving conflicts. Authentic cultural sources of conflict resolution techniques have been examined. Significant research has been done on traditional mechanisms for resolving disputes, which incorporate both tribal and Islamic practices. The field has moved in recent years toward the use of Islamic sources, including the Qur'an, the hadiths,⁶ and broad Islamic principles to develop a framework for peacebuilding and dispute resolution. There have also been calls for the professionalization of Islamic mediation in Muslim minority communities, to allow disputants to resolve interpersonal conflicts according to their own religious values.

CULTURE AND CONFLICT RESOLUTION

Kevin Avruch examines different approaches for conceptualizing cultural differences in models of conflict resolution.⁷ The “emic” approach describes a model using “a native term or institution as the key organizing concept for description and analysis.”⁸ That is, it describes the model purely from the standpoint of the culture in

⁶ A hadith is “a narrative record of the sayings or customs of Muhammad and his companions.” *Merriam-Webster Online Dictionary*, s.v. “Hadith,” <http://www.merriam-webster.com/dictionary/hadith> (accessed August 9, 2009).

⁷ Kevin Avruch, *Culture and Conflict Resolution* (Washington, DC: United States Institute of Peace Press, 1998), 57-72.

⁸ *Ibid.*, 61.

which it is based. A strength of this approach is its attention to cultural context, allowing for nuanced analysis. A weakness, however, is that it can lend itself to broad categorizations of a particular culture that gloss over differences among individuals (i.e. allowing researchers to think they have found “*the* key that unlocks all the mysteries”⁹ of the culture they study.)¹⁰

The “etic” approach identifies “underlying, structurally deep, and transcultural forms, expressed in terms of certain descriptors that are putatively capable of characterizing domains across cultures.”¹¹ Models based on this approach “present a vocabulary for encapsulating and comparing cultures across the board.”¹² Although this approach provides an easy way to categorize cultural data and allows for comparison across cases,¹³ its obvious drawback is its lack of complexity.¹⁴ Etic models then become “crude instruments for measuring rather fine aspects of culture.”¹⁵

Avruch argues for combining these two approaches in a discussion of culture and conflict resolution.¹⁶ While it may be useful to group conflict resolution models into broad categories (e.g. collectivist v. individualist), it is also important to understand the cultural context of these practices. In a discussion of an Islamic mediation models, then, it is helpful to identify differences between Islamic and Western models and also to delve into the cultural factors underlying these differences.

⁹ Ibid., 62.

¹⁰ Ibid..

¹¹ Ibid., 63.

¹² Ibid.

¹³ Ibid., 67.

¹⁴ Ibid., 68.

¹⁵ Ibid.

¹⁶ Ibid., 68-72.

The Western Mediation Process: An Overview

Because this study focuses on the practice of mediation in Western countries, it is important to offer an overview of the dominant form of mediation practiced in the West. Mediation is one of several processes that fall into the category of alternative dispute resolution (ADR). ADR processes function outside the formal court system, allowing parties to resolve their disputes without resorting to costly and emotionally taxing legal battles. Arbitration is one of the more formal ADR processes, in which disputing parties select a third party to make a judgment on their case. This judgment may simply be advisory, or it can be legally binding if the disputants so choose. Mediation is less formal, and relies on the parties themselves to reach a mutually acceptable solution, which is not binding.

Although ADR processes by definition fall outside the court system, they do interact with the legal system in some ways. Binding arbitration, for example, requires parties to accept the judgment of the arbitrator. Courts that wish to reduce their caseload may also require parties to attempt mediation before allowing them to bring their case before the court. Mediators come from a variety of educational and professional backgrounds, including law, communications, social work, and public policy. There are typically no laws governing a private mediation practice. However, for those who handle court-referred cases, local governments may require formal training. In the State of Texas, for example, court-appointed mediators must take a 40-hour basic mediation course, with an additional 24-hour training required to handle family dispute cases such as divorce.¹⁷

¹⁷ "Dispute Resolution - Texas Style," State Bar of Texas Alternative Dispute Resolution Section, http://www.texasadr.org/texas_style.html (accessed July 11, 2009).

A more in-depth discussion of the mediation process is necessary to better understand how it functions and the cultural assumptions that underlie it. Christopher W. Moore, in his well-known text on mediation, defines it as follows:

Mediation is generally defined as the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power, who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issues in dispute. In addition to addressing substantive issues, mediation may also establish or strengthen relationships of trust and respect between the parties or terminate relationships in a manner that minimizes emotional costs or psychological harm.¹⁸

The dominant form of mediation in North America and Western Europe is what Moore describes as the “independent mediator.”¹⁹ The distinguishing characteristic of this type of mediator is his or her neutrality in relation to the parties involved and impartiality toward to the issues in dispute. These mediators do not have the power to coerce settlements or to enforce agreements, but rather serve the parties involved, who participate voluntarily.²⁰

A classic text of ADR that heavily informs the practice of mediation in Western societies is Roger Fisher and William Ury’s *Getting to Yes*.²¹ The authors argued that the prevalent method of negotiation, in which parties took a position and argued in favor of it, presented numerous barriers to reaching an effective agreement. They argued that their alternative method of “principled negotiation,” which revolved around “basic interests, mutually satisfying options, and fair standards,” would result in amicable and efficient agreements.²² The method is outlined in four main principles. First, separate

¹⁸ Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 3rd Ed. (San Francisco: Jossey-Bass, 2003), 15.

¹⁹ Ibid., 52.

²⁰ Ibid., 44-45.

²¹ Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement without Giving In*, ed. Bruce Patton (New York: Houghton Mifflin Corporation, 1991).

²² Ibid., 14.

the people from the problem. Fisher and Ury assert that relationship issues become entangled with the substantive issues of a dispute and must be addressed separately. To resolve these “people problems,” they propose that parties attempt to understand each other’s position, maintain open communication, and acknowledge and address emotions when they surface during the process.²³

The second principle of Fisher and Ury’s method is to focus on interests, not positions.²⁴ Interests are the motivating factors that underlie the positions that people take in a conflict. For example, when one person takes the position that his neighbor should get rid of a barking dog, the underlying interest may be a need for peace and quiet. By addressing this interest directly, rather than arguing over whether or not the neighbor should get rid of the dog, the two parties might find another, mutually beneficial option (e.g., keeping the dog inside at night when the neighbor wants to sleep).

The third principle is to invent options for mutual gain; that is, proposing solutions that the other side can live with.²⁵ The fourth principle is to insist on using objective criteria in negotiations. For example, in negotiating the price of a used car, one party might quote the Blue Book value of the vehicle. The idea is that “the more you bring standards of fairness, efficiency, or scientific merit to bear on your particular problem, the more likely you are to produce a final package that is wise and fair.”²⁶

Fisher and Ury’s method reveals some of the assumptions of Western dispute resolution, such as the value placed on objectivity and fairness and the belief that relationship issues must not unduly influence the bargaining process. The cultural

²³ Ibid., 21-39.

²⁴ Ibid., 42-55.

²⁵ Ibid., 56-80.

²⁶ Ibid., 83.

assumptions of the Western model will be discussed at greater length in the following sections.

There are numerous sub-specialties within the field of mediation. The specialization most relevant to this study is family mediation. Family mediation in the West has traditionally encompassed cases that may otherwise have ended up in the court system, dealing with issues such as divorce, child custody, adoption, domestic violence, and child protection.²⁷ The perceived advantage of mediation in such cases is that parties work to reach an agreement that is mutually satisfying while avoiding an adversarial process that might further harm to the parties, particularly if there are children involved.

Although mediation is often used in divorce cases, it is increasingly seen not only as a tool for facilitating the dissolution of families but also as a tool for keeping them together. Marital mediation is a relatively new field within family mediation that helps couples identify the main issues that cause problems in their relationship and change the behaviors that lead to these problems.²⁸ The result might be a formal post-nuptial agreement or it might be an oral agreement by both parties to change the way they behave. Like all types of mediation, marital mediation is a short-term process, lasting several sessions, with a mutually acceptable agreement as the goal.

This type of family mediation is sometimes compared to family therapy or marriage counseling, but it differs in several respects. The mediation process is “goal-focused, task-oriented, and time-limited.”²⁹ Mediation is concerned mainly with finding practical solutions to disputes, while therapy addresses “pressing internal or intrapsychic issues, emotional needs, and the relationship between the individual's emotional needs

²⁷ Moore, 26-27.

²⁸ Susan K. Boardman et al., Marital Mediation: An Emerging Area Of Practice, May 2009. <http://www.mediate.com/articles/maritalmediation1.cfm#> (accessed August 10, 2009).

²⁹ Joan B. Kelly, "Mediation and Psychotherapy: Distinguishing the Differences," *Mediation Quarterly*, no. 1 (September 1983): 35.

and the quality of his or her relationships.”³⁰ This is not to say that emotions have no place in the mediation session. An important part of a mediation is expression and acknowledgment of emotions that underlie a conflict. However, this exploration is limited, as the focus remains on achieving an agreement between the parties.³¹

Effectiveness of the Western Mediation Model in Non-Western Cultures

John Paul Lederach was one of the first scholars to critique the cultural assumptions of North American dispute resolution processes and challenge their usefulness in other cultural contexts.³² While conducting mediations in Latin America, he identified the five aspects of the process that did not translate easily across cultures. First, North American mediation is a structured, formal, and bureaucratic process.³³ Second, the process emphasizes face-to-face communication. Third, mediators tend to have a “‘one thing at a time’ type of mentality” that is linear and fast-paced.³⁴ Fourth, the North American model assumes that disputants are autonomous and make their decisions independently. Lederach argues that parties in other cultures are often “closely integrated with the wider social network. It is in that network that decisions are made.”³⁵ Fifth, North American mediators are considered to be technical specialists and place an emphasis on the impartiality and neutrality of their role. In other cultures, “legitimacy is established by trust, knowledge of and confidence in who this person is—not by distance.”³⁶

³⁰ Ibid., 36.

³¹ Ibid., 39-40.

³² See also Michelle LeBaron Duryea and J. Bruce Grundison, *Conflict and Culture: Research in Five Communities in Vancouver, British Columbia* (Victoria: UVic Institute for Dispute Resolution, 1993).

³³ John Paul Lederach, "Cultural Assumptions of the North American Model of Mediation: From a Latin American Perspective," *Conflict Resolution Notes* 4, no. 3 (January 1987): 23.

³⁴ Ibid., 24.

³⁵ Ibid., 24.

³⁶ Ibid., 25.

A Comparison of Western and Islamic Approaches to Dispute Resolution

A review of the literature on dispute resolution in Islam indicates a number of key assumptions underlying Western mediation processes that could limit their effectiveness in resolving interpersonal disputes among Muslims. In particular, scholars have noted that Western models tend to place great emphasis on the individual autonomy of disputants, who are expected to make free choices based on their own personal interests. Islamic conflicts, however, “assume a great deal of social interdependence and community involvement, even in interpersonal matters.”³⁷ The mediation process in Islamic settings is “more relationship-oriented than task-oriented. A strong emphasis is placed upon the relationship of the parties to each other and to the remaining members of the community.”³⁸ That is, due to the “culture of relatedness”³⁹ that exists in Islamic societies, mediators and disputants must consider the conflict in the greater context of how it affects the community in order to reach a successful agreement. While the goals of the Western process focus on attaining individual satisfaction, goals in the Arab-Islamic process are concerned with “preserving and cultivating the established ‘wisdom’ of the community.”⁴⁰

Tied to this issue of community involvement and social interdependence is the role of the mediator and the type of person best suited to fill that role. In the Western model, mediators are expected to be impartial outsiders to a conflict. In Muslim societies, involving the disputants’ relatives “seems to be justified by the idea that the dispute

³⁷ Amr Abdalla, “Principles of Islamic Interpersonal Conflict Intervention: A Search within Islam and Western Literature,” *Journal of Law and Religion* 15.1/2 (2000 - 2001):162.

³⁸ Mohammed Abu-Nimer. “Conflict Resolution in an Islamic Context.” *Peace & Change* 21, no. 1 (1996):30.

³⁹ Abdalla, “Principles,” 175.

⁴⁰ George E. Irani and Nathan C. Funk, “Rituals of Reconciliation: an Arab-Islamic Perspective,” in Abdul Aziz Said, Nathan C. Funk, and Ayse S. Kadayifci, eds., *Peace and Conflict Resolution in Islam: Precept and Practice* (New York: University Press of America, Inc., 2001), 181.

between husband and wife is in fact inseparable from the social values of Muslim society....Any conflict between the elements of an extended family is therefore seen not as an individual but a family problem with the consequence that its resolution is crucial to all members of the unit.”⁴¹ One study of conflict resolution in Muslim Arab society found that friends, family, and neighbors would spontaneously intervene in the event of a marital quarrel.⁴² The mediator may therefore be an older, respected member of the extended family or the community who takes an active role in resolving the conflict for the betterment of the community, as opposed to the more facilitative role seen in Western mediation models.⁴³ If the mediator is well-off, he may even offer gifts to encourage the parties to reconcile.⁴⁴ This active involvement is expected by the disputing parties, who see the mediator “not as a mere facilitator, but rather as someone who has all the answers and solutions.”⁴⁵ The authority of the mediator to know what is best for the parties involved and to guide them toward a “correct” settlement is a key area of difference in Islamic and Western approaches to interpersonal conflict resolution.

In addition to the maintaining social harmony, mediators in an Islamic setting, particularly Muslim jurists, may also be concerned with finding out the truth of a situation in order to reach a settlement that they consider just. In Western mediation, the mediator as a neutral outsider does not make any judgment regarding the dispute and will not work to influence the outcome of the process. Although compromise may be sought outside the courts in order to maintain social harmony, Muslim jurists have identified “serious tension between these expressions of magnanimity and the Islamic ideals of

⁴¹ Ratno Lukito, “Religious ADR: Mediation in Islamic Family Law Tradition,” *Al-Jami’ah* 44, no. 2 (2006): 334.

⁴² Muhammad Faour, “Conflict Management within the Muslim Arab Family,” in *Conflict Resolution in the Arab World: Selected Essays*, ed. Paul Salem (Beirut: American University in Beirut, 1997), 184.

⁴³ Lukito., 335.

⁴⁴ Faour, 186.

⁴⁵ Irani and Funk, 175.

upholding truth and righteousness.”⁴⁶ Thus, mediators may be confronted with a dilemma when these two important values, social harmony and truth, are opposed.

The degree of formality is also a key difference between Western and Islamic conflict resolution. Conflict resolution in the Islamic context, particularly regarding family matters, is “profoundly informal....Conflict between husband and wife is, as much as possible, to be settled within the circle of the family, without interference by an outsider in the role of neutral party.”⁴⁷ There has been no professionalization of mediation in Islamic countries as there has been in Western countries,⁴⁸ and the process often lacks the legal formality of written agreements; rather, settlements are socially enforced.⁴⁹ There seems to be general agreement among scholars that the Western mediation model is not wholly applicable to dispute resolution among Muslims.

PEACE AND CONFLICT RESOLUTION IN ISLAMIC SOURCES

To better understand the development of conflict resolution models in Islam, we must examine the contributions that Islamic religious sources and traditional practices make to the discussion of conflict resolution in Islam. Islam is popularly called a “religion of peace,” but it is important to examine the meaning of this designation in practical terms and to understand its relevance to conflict resolution processes. In the discourse on interpersonal conflict resolution in Islam, scholars reference a number of sources, including the Qur’an, the Sunna, and works of legal theory. Aida Othman argues that Islamic sources provide the justification for the practice of dispute resolution among Muslims by examining the concept of *sulh* (amicable settlement). Othman

⁴⁶ Aida Othman, “And Sulh is Best: Amicable Settlement and Dispute Resolution in Islamic Law” (Ph.D dissertation, Harvard University, 2005), 57.

⁴⁷ Lukito, 336.

⁴⁸ Abu-Nimer, “Conflict Resolution,” 29.

⁴⁹ Ibid., 30.

examines Qur’anic verses dealing with *sulh*, and argues that these verses urge believers to settle disputes between themselves.⁵⁰

And if a wife fears ill-treatment or neglect on her husband’s parts, there is not wrong for them to arrange an amicable settlement between themselves and settlement is best, even though men’s souls are swayed by greed; but if you do good and practice self-restraint, God is well-acquainted with all that you do.

(*Al-Nisa’* 4:128)⁵¹

Another important Qur’anic verse cited to support the process of mediation is *Surat Al-Nisa’* 4:35, which enjoins those involved in marital disputes to appoint a mediator to negotiate for each party.

And if you fear a breach between them, appoint an arbiter from his family and one from hers. If they wish for reconciliation, God will reconcile between them.

(*Al-Nisa’* 4:35)⁵²

Othman argues that this verse supports the use of an “internal mechanism” to settle marital disputes, “even when tensions have only just begun between them.”⁵³ Ratno Lukito argues that this verse serves as the main basis of the Islamic tradition of family dispute resolution, in that it establishes that the third party representatives must be from the disputants’ families and it defines their role as active participants in the dispute resolution process.⁵⁴ However, there is disagreement over whether the role of these two arbiters should be interpreted more as mediation or arbitration (a more adversarial process in which a judgment is rendered).⁵⁵

⁵⁰ Othman, 33-57.

⁵¹ Qur’an 4:128, quoted in Othman, 43.

⁵² Qur’an 4:35, quoted in Othman, 40.

⁵³ Othman, 40.

⁵⁴ Lukito, 333.

⁵⁵ *Ibid.*, 337-338.

Othman also notes numerous hadiths that support the use of dispute resolution outside the courts. The Prophet himself mediated both private and public disputes.⁵⁶ The caliph Umar instructed judges to turn disputants away in order to promote peaceful reconciliation as opposed to an adversarial adjudication, which would exacerbate conflict.⁵⁷ As mentioned above, Othman also notes a tension between the Islamic ideal of truth and the injunction for parties to reconcile disputes. There are differing opinions regarding which of these ideals—peace or truth—should take precedence in the dispute resolution process.⁵⁸

Mohammad Abu-Nimer surveys scholarly exegesis of Qur’anic and other Islamic religious sources to identify Islamic principles and values that support peaceful strategies for conflict resolution. These principles, he argues, will serve as the basis for creating “a larger analytical and theoretical framework for peace building derived from Islamic religion and tradition.”⁵⁹ Although he focuses primarily on broader social and international conflict, Abu-Nimer’s findings are applicable to a discussion of interpersonal dispute resolution among Muslims. The pursuit of justice is among the most important of these principles. According to Abu-Nimer, Muslims are called upon to create a “just social reality” and to “reject oppression on both interpersonal and structural levels.”⁶⁰ The equality of all humans in the eyes of God is another principle that Abu-Nimer argues is central to peacebuilding in Islam.⁶¹ Equality, according to Abu-Nimer, is the basis for communal solidarity that extends beyond tribal or religious boundaries,

⁵⁶ Othman, 69, 83.

⁵⁷ Ibid., 87.

⁵⁸ Ibid., 84-106.

⁵⁹ Mohammed Abu-Nimer, *Nonviolence and Peace Building in Islam: Theory and Practice* (Gainseville: University Press of Florida, 2003), 48.

⁶⁰ Ibid., 49.

⁶¹ Ibid., 58-59.

which can be used to support collaborative action in peacebuilding efforts.⁶² Inclusivity and pluralism are other Islamic values identified by Abu-Nimer which may serve as a basis for conflict resolution processes.⁶³

Amr Abdalla also argues that Islamic principles of justice, freedom, and equality should be used to support a dispute resolution framework.⁶⁴ Neither author, however, addresses the less liberal interpretations of Islamic sources that some groups use to justify violent action, one of the criticisms of Abu-Nimer's study.⁶⁵

DISPUTE RESOLUTION IN ISLAMIC SOCIETIES

Research on traditional methods of conflict resolution in Islamic societies has focused almost entirely on Arab societies, which have a rich tradition of indigenous conflict resolution mechanisms from which to draw. Mohammed Abu-Nimer identified three main bases for traditional dispute resolution in Muslim Arab societies: tribal law, Islamic law, and cultural and traditional practices (*'urf*). He notes that none of these approaches are mutually exclusive. Those who intervene in conflicts may draw techniques from a combination of these sources, but Islamic values, as the mediator defines them, remain paramount.⁶⁶

Traditional mediators in a rural setting often draw on Islamic values and beliefs, while the Shari'ah⁶⁷ arbitrators often rely on traditional and cultural norms when settling a community or interpersonal dispute. The tribal leader as arbitrator-mediator might rely on both the Islamic laws and the *'urf*. Regardless of the

⁶² Ibid., 73.

⁶³ Ibid., 75-82.

⁶⁴ Abdalla, 170-171.

⁶⁵ See Karen Abi-Ezzi, review of *Nonviolence and Peace Building in Islam: Theory and Practice*, by Mohammed Abu-Nimer, *Middle East Journal* 57, no. 4 (2003):694.

⁶⁶ Abu-Nimer, *Nonviolence*, 92.

⁶⁷ Shari'ah is "Islamic law based on the Koran." *Merriam-Webster Online Dictionary*, s.v. "Sharia," <http://www.merriam-webster.com/dictionary/sharia> (accessed August 9, 2009).

setting, Islamic values, beliefs, and tradition constitute an important source in the application of dispute resolution in the Arab world.⁶⁸

An important traditional conflict resolution mechanism in Arab societies is the *sulh* (settlement) ritual. *Sulh* has roots in both Islamic law and tribal custom, and it is still practiced in rural areas in the Middle East to restore social harmony when a violent crime has occurred.⁶⁹ George E. Irani describes a typical case of *sulh*:

Following a murder, the family of the murderer, in order to thwart any attempt at blood revenge, calls on a delegation of mediators comprised of village elders and notables, usually called *muslihs* or *jaha* (those who have gained the esteem of the community). The mediators initiate a process of fact-finding and questioning of the parties involved in the murder. As soon as the family of the guilty party calls for the mediators' intervention, a *hodna* (truce) is declared.... Sometimes, a blood price is paid to the family of the victim that usually involves an amount of money, *diya*, set by the mediators.... The ritual process of *sulh* usually ends in a public ceremony of *musalaha* (reconciliation) performed in the village square. The families of both the victim and the guilty party line up on both sides of the road and exchange greetings and accept apologies, especially the aggrieved party.⁷⁰

The resolution of less serious conflicts can involve a similar process. Richard Antoun uses a case of interfamily conflict over a marriage in a Jordanian village to identify specific techniques employed to resolve disputes.⁷¹ These included the use of third parties who are well-connected or powerful who employ dyadic diplomacy, a technique in which mediators take disputants aside and implore them to settle for the sake of community or family. This is a powerful face-saving technique, as it allows disputants to make concessions on the basis of respect for the mediators rather than appearing to retreat.⁷² Mediators also used traditional rituals of hospitality to pressure disputants to

⁶⁸ Abu-Nimer, *Nonviolence*, 92.

⁶⁹ Irani and Funk, 182.

⁷⁰ Irani, 12-13.

⁷¹ Richard Antoun, "Institutionalized Deconfrontation: A Case Study of Conflict Resolution among Tribal Peasants in Jordan," in Paul Salem, ed., *Conflict Resolution in the Arab World: Selected Essays* (Beirut: American University of Beirut, 1997), 140-174.

⁷² *Ibid.*, 158.

reconcile.⁷³ Antoun observed in numerous cases of village conflict resolution that the process involved “trading of moral condemnation and symbolic goods in return for substantive concessions.”⁷⁴

Abu-Nimer also analyzes a typical case of a community or interpersonal dispute in a Palestinian community, with similar findings. A powerful third party is brought in who shuttles between disputants and “coaxes concessions from both parties to reach a settlement range, relying on religious and cultural values to persuade the parties of the importance of concessions and the restoration of justice and harmony to the community.”⁷⁵ He also acknowledges the importance of rituals in cementing an agreement.⁷⁶

Cathie Witty’s study of mediation in a rural Lebanese village further supports these conclusions. The villagers she interviewed emphasized the importance of the community as a stabilizing influence during times of conflict. “The family, they say, is aware of the overall importance of nobility and dignity in dealing with others. Although these ideals may be forgotten by an individual in times of anger, time and people work together to reintegrate and realign the values of the village.”⁷⁷ She found that the local *mukhtar* (mayor) and other respected elders were frequently involved in dispute resolution and would “undertake quiet investigations, asking questions throughout the village and consulting privately with appropriate families.”⁷⁸

Scholars have outlined key assumptions underlying the traditional dispute resolution process. First, conflict is considered a negative thing for the community, and

⁷³ Ibid., 159.

⁷⁴ Ibid., 160.

⁷⁵ Abu-Nimer, *Nonviolence*, 106.

⁷⁶ Ibid., 107-109.

⁷⁷ Cathy J. Witty, *Mediation and Society: Conflict Management in Lebanon* (New York: Academic Press, 1980), 47.

⁷⁸ Ibid., 48.

intervention by a third party in order to restore harmony is considered a positive response.⁷⁹ Following from this is the assumption that the parties actually wish to be reconciled because of the importance of social harmony. If they do not, according to Antoun, the goal of the mediator is to convince them to do so.⁸⁰ Second, it is assumed that a third party is better suited to present a disputant's case than the disputant himself. Parties may thus choose not to enter into face-to-face negotiations and instead allow the mediator complete control of the process.⁸¹ Third, the process of conflict resolution and reconciliation is not intended to address the underlying cause of the conflict, such as historical grudges, structural inequalities and power imbalances.⁸² Rather, its value is considered to be in publicly demonstrating that the parties have reconciled, thus allowing normal social relations to resume.⁸³ A fourth assumption is that the community is able to influence disputants, and thus involvement of community members will contribute both to escalation and de-escalation of the conflict.⁸⁴ Tied to this is the importance of community relationships, and the assumption that disputants will consider what repercussions their actions will have in their social network.⁸⁵

While most research on dispute resolution in the Arab world focuses on traditional mechanisms employed in rural villages, Muhammad Faour conducted a study on conflict management within Arab Muslim families in Lebanon in which he investigated conflict in an urban setting. He notes that with the decline of tight kinship networks in urban areas, the importance of elders as mediators has waned in favor of the

⁷⁹ Antoun, 162. Abu- Nimer, *Nonviolence*, 102.

⁸⁰ Antoun, 162

⁸¹ Antoun, 162. Abu- Nimer, *Nonviolence*, 104.

⁸² Abu- Nimer, *Nonviolence*, 102-103. Antoun, 163.

⁸³ Antoun, 163.

⁸⁴ Abu- Nimer, *Nonviolence*, 103.

⁸⁵ *Ibid.*, 104.

intervention of younger family members, neighbors, and friends.⁸⁶ Nevertheless, community intervention is still the norm.⁸⁷

DISPUTE RESOLUTION IN MUSLIM MINORITY COMMUNITIES

Muslims living in Islamic societies may thus draw upon a vast array of cultural and religious traditions in order to resolve their disputes. They usually have a broad network of family and community support, as well as access to Islamic courts should they wish to resolve their disputes through formal religious means. Muslims living as religious minorities in secular Western societies, however, do not have access to the same types of support as Muslims living in Islamic societies. This may be a particular challenge for immigrants who are accustomed to community intervention. Many Western countries have large Muslim minority populations (Table 1), making research on this topic particularly relevant.

Table 1: Large Muslim Minority Populations⁸⁸

Country	Muslim population	Percentage of total population
Austria	339,000	4.1
Belgium	400,000	4
Canada	662,000	2
Denmark	270,000	5

⁸⁶ Faour, 184.

⁸⁷ Ibid.

⁸⁸ Data for European countries from *BBC News*, "Muslims in Europe: Country guide," December 23, 2005, <http://news.bbc.co.uk/2/hi/europe/4385768.stm> (accessed June 20, 2009). Data for Canada from *U.S. State Department Country Background Notes*. S.v. "Canada" (Updated November 2008). <http://www.state.gov/r/pa/ei/bgn/2089.htm> (accessed July 5, 2009). Data for United States from The Pew Forum on Religion and Public Life, *U.S. Religious Landscape Survey, Religious Affiliation: Diverse and Dynamic, February 2008*, <http://religions.pewforum.org/reports> (accessed June 20, 2009) and Ihsan Bagby, Paul M. Perl, and Bryan T. Froehle, *The Mosque in America: A National Portrait, A Report from the Mosque Study Project* (Washington, DC: Council on American-Islamic Relations, 2001), page #s, http://www.cair.com/Portals/0/pdf/The_Mosque_in_America_A_National_Portrait.pdf (accessed August 9, 2009)..

France	5,000,000 – 6,000,000	8.0-9.6
Germany	3,000,000	3.6
Italy	825,000	1.4
Netherlands	945,000	5.8
Spain	1,000,000	2.3
Sweden	300,000	3
Switzerland	310,800	4.2
United Kingdom	1,600,000	2.8
United States	1,800,000– 7,000,000	0.6 – 2.3

Cultural values that differ from the majority in Western society may be a source of conflict within Muslim communities. Muslim immigrants, in particular, may find their traditional beliefs related to family challenged by Western social norms. Ernest Waugh highlights common value conflicts encountered by immigrants:

Family traditions, such as the clear-cut role separation of the sexes, status, differentials, and achievement markers are all subject to modification.... Girls are under peer pressure to conform to dating and friendship codes frowned upon or rejected by traditional Muslim societies.... Family structure, where decision-making is in the hands of the eldest male, is directly challenged by the North American code of success: he who flourishes financially has the power.⁸⁹

In a qualitative study, W. Murray Hogben has sought to explain perceived high rates of divorces among Canadian Muslims by asking Muslim religious leaders to cite reasons for marital disputes in their congregations.⁹⁰ Some religious leaders perceived Canadian Muslim women to be more likely to work outside the home and because of this independence feel less pressure to stay in the marriage. They also believed that divorce was more common because Muslim women in Canada had the option of using Canadian

⁸⁹ Earle H. Waugh, "North America and the Adaptation of the Muslim Tradition: Religion, Ethnicity, and the Family," in *Muslim Families in North America*, ed. Earle H. Waugh, Sharon McIrvin Abu-Laban, and Regula Burckhardt Qureshi (Edmonton: University of Alberta Press, 1991), 79-80.

⁹⁰ W. Murray Hogben, "Marriage and Divorce among Muslims in Canada," in *Muslim Families in North America*, ed. Earle H. Waugh, Sharon McIrvin Abu-Laban, and Regula Burckhardt Quraishi (Edmonton: University of Alberta Press, 1991), 170-171.

civil courts, which would grant them a divorce and alimony payments. It should be noted, however, that in another study, the women participants “give a high priority to marriage as a sacred bond and see divorce only as a last resort.”⁹¹ The religious leaders in Hogben’s study also believed disputes to be common when one partner adopted North American customs, while the other had “more traditional expectations of behavior.” Some religious leaders reported problems with husbands engaging in extramarital affairs with Canadian women. Finally, interfaith marriage between Muslims and non-Muslims often led to disputes over the religious upbringing of the children.

These findings are consistent with those from Anne Saris’ study of Muslim women in Quebec. From interviews with these women, Saris found that they “encountered a number of family problems associated with the culture shock that normally accompanies immigration to a new and different culture, in particular changes in the dynamic of the married couple, shifts in gender identity and economic realities that push women into paid employment where previously they had worked in the home.”⁹² A similar pattern has been observed in Europe, where high unemployment among Muslim immigrants has upset the traditional balance of power in households and led to family conflict.⁹³ Like Hogben, Saris also found that disputes arose when spouses chose different religious paths and disagreed over the religious education of their children.⁹⁴

There is a rich diversity of culture, language, national origin, and religious practice within Muslim communities in Europe and North America, which may

⁹¹ Anne Saris, "Sharia in Canada: Family Dispute Resolution among Muslim Minorities in the West: Analysis of a Case Study of Muslim Women, Religious Counselors and Civil Actors in Montreal" (paper presented at Untying the Knots: Theorizing Conflicts between Gender Equality and Religious Laws, Brandeis University April 14-15, 2008), www.brandeis.edu/hbi/pubs/AnneSaris.doc (accessed June 14, 2009), 11.

⁹² Ibid., 8.

⁹³ Fatima Husain and Margaret O'Brien, "Muslim Communities in Europe: Reconstruction and Transformation," *Current Sociology* 48, no. 4 (October 2000): 8.

⁹⁴ Saris, 8.

sometimes serve as a source of conflict. Yvonne Yazbeck Haddad, in her study of Muslims living in the U.S., detailed a particular conflict within a mosque, in which recent immigrants clashed with first- and second- generation American Muslims.⁹⁵ The immigrants wanted mosque life to reflect what they were used to in their home countries, while American Muslims wanted to adopt some aspects of American culture. As the number of recent immigrants grew, they eventually took over leadership of the mosque and instituted numerous changes. Men and women were required to pray in separate rooms, social events for young people were canceled, and the language of the Friday service was changed from English to Arabic. The conflict grew so intense that it resulted in a legal battle, in which the newer immigrant leadership prevailed.

Generational differences among both indigenous and immigrant Muslim families and the perceived threat of cultural assimilation may also give rise to conflict within Muslim families and communities in Western societies.⁹⁶ Studies have indicated that language is a key barrier to intergenerational communication in Muslim communities, and some families may find it difficult to transmit their religion and culture to their children.⁹⁷ Husain and O'Brien have also noted intergenerational conflicts occurring in Europe, when young people "question their parents' commitment to an Islam free of local traditions and cultural practices" and pursue a more "pure" or "orthodox" practice of Islam.⁹⁸ An in-depth discussion of cultural and religious identity in Muslim minority

⁹⁵ Yvonne Yazbeck Haddad and Adair T. Lummis, *Islamic Values in the United States: A Comparative Study* (New York: Oxford University Press, 1987), 39-44.

⁹⁶ Waugh, 76-77.

⁹⁷ Karen Isaksen Leonard, *Muslims in the United States: The State of Research* (New York: Russell Sage Foundation, 2003), 62.

⁹⁸ Husain and O'Brien, 9.

communities is outside the scope of this thesis but has been addressed in several important works.⁹⁹

Given the numerous and unique sources of conflict that Muslim communities in the West must face, it is important that they have options for resolving their disputes in a way that suits their cultural and religious needs. In the past, Muslims living in Western societies who wished to resolve their disputes according to Islamic law or values have pursued a number of formal and informal options, which are discussed below.

Civil Courts

In a number of cases, Muslims have taken disputes to civil courts and asked that the courts consider Islamic law in their rulings. In the U.S., this has resulted in some inconsistency with regard to family law rulings.¹⁰⁰ For example, in divorce proceedings, courts have differed on how they deal with the deferred *mahr* payment. The *mahr* is a gift that the groom gives to the bride, and the marriage contract often stipulates that part of the payment be deferred until the event of a divorce or the death of the husband. This is generally intended to discourage capricious divorce on the part of the husband. In *Dajani v. Dajani* in 1988, a California court treated the marriage contract as a pre-nuptial agreement. It ruled that the deferred *mahr* payment facilitated divorce—i.e. gave the wife a financial incentive to divorce the husband—and was therefore invalid under California law (most states have laws prohibiting prenuptial agreements that facilitate

⁹⁹ For a more in-depth discussion of Muslim minority communities, see Leonard; Haddad and Lummis; Waugh, Abu-Laban, and Qureshi; and Yvonne Yazbeck Haddad and John L. Esposito, eds., *Muslims on the Americanization path?* (New York: Oxford University Press, 2000).

¹⁰⁰ For an in-depth discussion of Islamic law in American courts, see Asifa Quraishi and Najiba Syeed-Miller, "No Altars: a Survey of Islamic Family Law in the United States," in *Women's Rights and Islamic Family Law: Perspectives on Reform*, ed. Lynn Welchman (New York: Zed Books Ltd, 2004), 199-212. See also Sylvia Whitman, "Whose Place to Decide? Islamic Family Law Issues in American Courtrooms" (paper presented at the Association of Muslim Social Scientists 34th Annual Conference "Muslims and Islam in the Chaotic Modern World: Relations of Muslims among Themselves andwith Others," Temple University, Philadelphia, PA, September 30-October 2, 2005), www.amss.net/pdfs/34/finalpapers/SylviaChoateWhitman.pdf (accessed July 11, 2009).

divorce).¹⁰¹ If the court had had a better understanding of Islamic law, it might have understood that the intent of the deferred *mahr* is in fact to prevent a husband from divorcing his wife capriciously.

However, in other cases, courts have viewed marriage agreements as standard contracts. In *Odatalla v. Odatalla* in 2002, a court ruled that the husband must pay all of the \$10,000 *mahr* payment that was stipulated in the marriage contract, though he tried many arguments to avoid doing so.¹⁰² In *Shaban v. Shaban* in 2001, a husband insisted that he only pay his wife 500 Egyptian pounds upon their divorce, as per the terms of their marriage contract. However, the contract stated that the marriage be governed “according to Islamic law,” which a California court found too vague. Because contracts are required by law to be clear, the court invalidated the agreement, and the wife was awarded half of the \$3 million estate under California community property laws.¹⁰³ Thus, there has been some consideration of Islamic law in American civil courts with regard to divorce, though its application has been inconsistent. The exception to this effort to incorporate Islamic law into civil rulings is custody cases, in which courts will always rule in favor of what they perceive to be the best interests of the child, regardless of applicable Islamic laws.¹⁰⁴

A key issue that complicates matters for the courts, as well as for Muslims who seek Islamic legal advice in Western societies, is the lack of a single authoritative source for Islamic legal knowledge, particularly with regard to minority communities. While Muslims may look to traditional centers of Islamic knowledge, such as Al-Azhar and Qum, these bodies may not be well-suited to issue rulings for Muslims living as

¹⁰¹ Quraishi and Syeed-Miller, 202.

¹⁰² Ibid., 201.

¹⁰³ Ibid., 203-204.

¹⁰⁴ Whitman, 20.

minorities in developed countries who must also deal with legal complexities of their countries. Some organizations, such as the Fiqh Council of North America, have attempted to provide rulings that are relevant to Muslims living in the U.S. However, it is not clear how much credibility this organization has among Muslims and whether it will be accepted as a substitute for scholarship originating overseas.¹⁰⁵

Besides the lack of expertise in Islamic law and the inconsistency of its application in civil courts, there are a number of other perceived drawbacks to using civil courts. Some Muslims prefer to settle disputes according to religious norms rather than through a secular civil process, because they find an Islamic process more personally meaningful. Macfarlane found this to be the case among many women in her divorce study.¹⁰⁶ Participants in Macfarlane's study also voiced a preference for the cultural norm of community involvement in dispute resolution, asserting that "going to court is inappropriate, that it is better to solve the problem within the community."¹⁰⁷ Fear or distrust of the civil court system also affects whether Muslims pursue this option. Macfarlane regularly heard that "some Muslims are intimidated by the courts, unfamiliar with the language and procedures, and some believe that contact with the formal state may bring other problems down on their head – for example, this will bring the child welfare officials to their door, or even worse, the immigration department."¹⁰⁸

The most obvious drawback to courts is that they are very limited in the type of cases they can handle. They may be used only for those family disputes, such as divorce cases, that are subject to civil law. Most family disputes, however, do not involve

¹⁰⁵ For a discussion of Islamic scholarship in North America, see Yusuf Talal DeLorenzo, "The Fiqh Council in North America," in *Muslims on the Americanization Path?*, ed. Yvonne Yazbeck Haddad and John L. Esposito (New York: Oxford University Press, 2000), 65-85. Quraishi and Syeed-Miller, 177-229.

¹⁰⁶ ulie Macfarlane, "Faith-Based Dispute Resolution-Transcription," *Islamic Divorce in North America: A Research Study*, <http://www.islamicdivorce.org/art2.htm> (accessed July 5, 2009).

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

legalities. If a wife and husband were fighting over whether the wife will work outside the home, how to manage the family's finances, or how to deal with an overbearing mother-in-law, civil courts would be of little help.

Islamic Arbitration through Informal Courts

Another option for some Muslims living in the West is a system of informal Islamic courts, known in some places as arbitration panels or religious tribunals. Recall that arbitration is a form of dispute resolution in which a third party renders a judgment regarding a case. The Islamic Sharia Council (ISC) is one such informal court in the United Kingdom. According to its founders, the ISC was established because British courts were not meeting the needs of UK Muslims, who were finding it difficult to adhere to both Islamic law and English law.¹⁰⁹ A common problem, for example, occurs when a husband and wife divorce in the British civil court, but the husband does not pronounce the religious *talaq* (in which a husband initiates a divorce unilaterally), thus preventing her from remarrying. The husband can then use the divorce to coerce the wife into a settlement in his favor in terms of custody or *mahr* payment.¹¹⁰ The British courts are unable to compel a husband to pronounce *talaq*, but through the ISC, a woman may initiate religious divorce proceedings (*khul'*). Such cases account for the majority of the 4,500 cases the organization handled between 1982 and 2002.¹¹¹

Few outside the British Muslim community were even aware that these courts existed until the Bishop of Canterbury, in a highly controversial move, endorsed them in 2008. Many in the British public criticized the application of Islamic law, citing the lack

¹⁰⁹ Ihsan Yilmaz, "Muslim Alternative Dispute Resolution and Neo-Ijtihad in England," *Alternatives Turkish Journal of International Relations* 2, no. 1 (Fall 2003): 117-139. See also Caryn L. Wolfe, "Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts," *Fordham Law Review* 75 (2006): 216-220.

¹¹⁰ Yilmaz, 131.

¹¹¹ "About Us: The Wife does not feel completely free to enter into another marriage," Islamic Sharia Council, <http://www.islamic-sharia.org/about-us/about-us-7.html> (accessed July 12, 2009).

of accountability and transparency in the arbitration process.¹¹² However, the British government has been supportive of the courts, attempting to reassure Muslims that they may continue to practice their traditions.¹¹³

There have been some calls for establishment of religious arbitration panels in the United States,¹¹⁴ although Muslims in the U.S. are thought to be interested in a more egalitarian approach to interpersonal conflict resolution, as opposed to Muslims in the UK, who tend to favor the informal Islamic courts.¹¹⁵ The attitude of American courts is not yet clear on the issue of Islamic tribunals, although comparable Christian and Jewish tribunals have operated in the U.S. and other secular societies for many years.¹¹⁶

Not all attempts to apply Islamic law in Western societies have been well-received. In Canada, controversy erupted in 2003 when the Canadian Society of Muslims formed the Islamic Institute of Civil Justice to arbitrate family disputes. The move was consistent with the Ontario Arbitration Act of 1991, which ostensibly allowed religious tribunals as long as they did not contradict Canadian law.¹¹⁷ Proponents of the tribunals argued that arbitration was preferable to mediation because the decisions of the tribunals could be enforced by the civil courts.¹¹⁸ Much of the opposition came from Muslim women's groups and others in Canadian society who thought that Islamic law was unfair

¹¹² Elaine Sciolino, "Britain Grapples with Role for Islamic Justice," *New York Times*, November 19, 2008, late edition.

¹¹³ Ibid.

¹¹⁴ Irshad Abdal-Haqq and Qudir Abdal-Haqq, "Community-Based Arbitration as a Vehicle for Implementing Islamic Law in the United States," *The Journal of Islamic Law and Culture* 1 (1996): 61-68. Quraishi and Syeed-Miller, 215.

¹¹⁵ Quraishi and Syeed-Miller, 215. Blackstone, 229.

¹¹⁶ See Randy L. Sturman, "House of Judgment: Alternate Dispute Resolution in the Orthodox Jewish Community," *California Western Law Review* 36 (1999-2000):417-436, Caryn L. Wolfe, "Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts," *Fordham Law Review* 75 (2006): 427-469, and Ginnine Fried, "The Collision of Church and State: A Primer to Beth Din Arbitration and the New York Secular Courts," *Fordham Urban Law Journal* 31 (2003): 633-655.

¹¹⁷ Wolfe, 448.

¹¹⁸ Blackstone, 238-239.

to women.¹¹⁹ The attorney general commissioned a report in 2004, which recommended that family law tribunals remain permissible under the Arbitration Act, although the report recommended a number of safeguards to protect the rights of women.¹²⁰ However, beyond legal concerns, opponents continued to raise the question of whether the tribunals were wise from a public policy perspective, fearing women would be coerced into participation.¹²¹

Several arguments were offered in favor of allowing religious tribunals to operate under the Arbitration Act.¹²² Proponents felt that courts were unable to address religious concerns and enforce religious laws, due to lack of expertise, resulting in inconsistent treatment of cases, and perceived constitutional restraints. They also cited safeguards that existed under the Ontario Arbitration Act. For example, each party is entitled to an attorney and due notice prior to the arbitration, and courts will not enforce agreements that were achieved under duress. Also, issues of child custody fall outside the realm of the arbitration, and courts decide instead according to “the best interests of the child.”

Opponents to religious tribunals countered that aspects of Jewish law and Islamic law were inherently prejudiced against women.¹²³ For example, in Islamic law, women may not marry non-Muslims and may not take a second husband, though men are allowed to do so. Further, it is significantly easier for men to initiate divorce than it is for women. Opponents also argued that the established safeguards were inadequate to protect vulnerable parties. For example, courts do not consider internal pressure from a religious community to be a form of duress, even though women may be ostracized for

¹¹⁹ Wolfe, 449.

¹²⁰ Blackstone, 239-240.

¹²¹ *Ibid.*, 245.

¹²² Summarized from Wolfe, 451-459.

¹²³ *Ibid.*, 459-465.

not conforming to certain religious expectations that may infringe on their rights.¹²⁴ Ultimately, the Ontario legislature responded to public pressure, amending the Arbitration Act in 2006 so that religious arbitrations are no longer enforceable by law.¹²⁵

In terms of serving the needs of Muslim communities, Islamic arbitration, like civil courts, may only be useful in disputes in which a legal ruling is sought. The Islamic courts may not be equipped to handle the types of commonplace disputes that Muslim families face on a daily basis.

Family Counseling

Another avenue that is widely available for addressing family conflict in Western societies is counseling or therapy. Only recently has research been done on the use of counseling by Muslim minorities. One study of American Muslim perceptions of counseling found that there are significant barriers to Muslims seeking treatment. Many Muslims (like many non-Muslims) believe that seeking counseling is an indication of mental illness and are worried that they will face the stigma of mental illness if people in the Muslim community find out that they have sought counseling.¹²⁶ Some have a negative view of counseling because they see it a “breach of family unity... Seeking professional counseling is regarded in most Muslim cultures as the last resort when all other traditional sources of support and advice are not available or have not been helpful.”¹²⁷ Another barrier to pursuing counseling is that Muslims are concerned that non-Muslim counselors will be biased against them due to their different value systems.¹²⁸

¹²⁴ Ibid., 464.

¹²⁵ Sciolino.

¹²⁶ Ahmed Nezar Kobeisy, *Counseling American Muslims* (Westport, Connecticut: Praeger, 2004), 77-78.

¹²⁷ Ibid., 81.

¹²⁸ Ibid., 86-88.

Despite these barriers, some Muslims do use counseling services, and there have been efforts to educate counselors on Islam and how to tailor their treatment approach to be sensitive to the needs of Muslims.¹²⁹ Counseling may be an effective option for those who are interested in improving relationships within their family and are willing to commit to a long-term process. However, for those who are looking for more short-term practical solutions, counseling may not be a good fit.

The Role of Imams in Informal Mediation

In Western countries, imams are often called upon to resolve conflicts among members of their congregation. In the absence of shaykhs, *qadis*, and other traditional authority figures, imams have shouldered a greater burden of responsibility in North American Muslim communities than they normally do in Islamic societies.¹³⁰ In a study of Islamic values in the United States, one U.S. imam said that “the mosque in America serves the Muslim affairs from cradle to death...a place where... all the necessary functions of society—economic, political, social, religious,...recreational—everything is being practiced here. The imam is the center of that place so he is the one to be involved with them, with all these things.”¹³¹

These myriad responsibilities include resolving disputes, particularly those that involve family issues—criminal or financial disputes are usually referred to attorneys so as not to conflict with the American legal system.¹³² While Muslims overseas may rely

¹²⁹ Ronald E. Hall and Jonathan N. Livingston, "Mental Health Practice with Arab Families: The Implications of Spirituality vis-à-vis Islam," *The American Journal of Family Therapy* 34 (2006): 139-150; Paul R. Spring, Douglas A. Abbott, and Allison M.J. Reisbig, "Therapy with Muslim Couples and Families: Basic Guidelines for Effective Practice," *The Family Journal: Counseling and Therapy for Couples and Families* 17, no. 3 (2009): 229-235; Saba Rasheed Ali and William Ming Liu, "Islam 101: Understanding the Religion and Therapy Implications," *Professional Psychology: Research and Practice* 35, no. 6 (2004): 635-642.

¹³⁰ Haddad and Lummis, 59.

¹³¹ *Ibid.*, 59.

¹³² Othman, 265.

on their extended family to intervene in conflicts according to traditional practice, Muslims living in the U.S. who lack this resource turn instead to their imam, who they trust because of “his knowledge of the Islamic faith and his ability to discern the proper means of resolving contentious issues.”¹³³ Imams in the U.S. thus find themselves assuming the role of marriage counselor to a far greater extent than their counterparts in Islamic societies.¹³⁴

The conflict resolution techniques employed by imams are diverse and include counseling, preaching, and arbitration.¹³⁵ Aida Othman interviewed imams in the Massachusetts area regarding their approach to conflict resolution among mosque members. She found that they “make it central to their mediation and reconciliation efforts that they bring parties closer to the normative behavior delineated by authoritative sources of Islam,” that is, the dictates of the Qur’an and Sunna.¹³⁶ According to Othman, imams guide the disputants toward a settlement that they believe is the correct one:

The religious reminders of imams can become the deciding factor in arriving at resolutions, breaking deadlocks simply by the weight of their position and spiritual authority. They will usually take opportunities to remind disputants that they should seek the reward promised to those who show forbearance, as well as fear the repercussions of omitting one’s duties or usurping the rights of another.¹³⁷

According to Othman, when imams mediate conflicts, they may defer to Islamic law even when parties are already willing to accept a settlement, attempting to strike a “balance between the desire to seek a mutually-arrived-at settlement to the dispute and the belief that Islamic law provisions are divinely willed rights that must be waived only with caution.”¹³⁸

¹³³ Haddad and Lummis, 59.

¹³⁴ Ibid., 60.

¹³⁵ Abdalla, “Views.”

¹³⁶ Othman, 266.

¹³⁷ Ibid., 268.

¹³⁸ Ibid., 271.

However, Imams seem to employ a broad range of approaches. A 2006-2009 study of Islamic divorce and marital disputes in North America conducted by Julie Macfarlane found that “in practice most imams do not apply the classical Islamic law in which children go to their father or mother depending on their age and sex, but instead look for ‘the best interests of the child’ just like the courts do. Much like the court system ‘90% of Islam is discretionary,’ as one imam told us.” Furthermore, Macfarlane’s study found that “there is a range of flexibility and overall tolerance towards divorce – and especially towards women seeking divorce – among the imams. Some are clearly more sympathetic to women in this situation than others.”¹³⁹ These differences of opinion influence the way in which an imam approaches a marital dispute, as does the imam’s culture of origin. Macfarlane found that “the cultures and traditions in particular communities, whether they are Middle Eastern, Indo-Pakistani, Somali, or Eastern European, also have an impact on how the various contentious issues get resolved between the couple. The Imams are a product of their own culture and they have their own particular approaches.”¹⁴⁰

There are a number of reasons that Muslims living in the West might go elsewhere for help in resolving their disputes. In some cases, imams may find themselves overburdened with their responsibilities and simply lack sufficient time to address every dispute in their congregation.¹⁴¹ Additionally, there may be circumstances in which the disputing parties would prefer not work with an imam. Perhaps the disputing parties are of a different ethnic background than the imam, or they feel that a foreign imam is not equipped to deal with the problems of Muslims living in the West.¹⁴² Anne Saris’ study

¹³⁹ Aisha Amjad, "Article from Azizah Magazine," Islamic Divorce in North America: A Research Study, <http://www.islamicdivorce.org/art3.htm> (accessed July 5, 2009).

¹⁴⁰ Macfarlane.

¹⁴¹ Haddad and Lummis, 60.

¹⁴² Othman, 274.

found that some respondents were hesitant to approach their imams with family disputes for a number of reasons:

The participants are almost evenly split between those who feel they can and cannot trust them. Many from the latter group perceive the imam as biased in favor of the husband and as tending to overemphasize the obligation for women to bear their husbands' excesses with patience. There is also the fact that some women do not perceive the imams as having the requisite authority to ensure that the spouse will follow any agreement resulting from conciliation or mediation.¹⁴³

Despite the perceived drawbacks to asking imams to mediate disputes, some Muslims in minority communities do prefer this course of action. Among those participants in Saris' study who said they would approach imams to resolve conflicts, reasons cited included "ethnic and cultural proximity, low cost, ease of access and confidentiality of the process."¹⁴⁴ Macfarlane also found that time and cost were an important factor in choosing an imam over divorce proceedings in civil courts.¹⁴⁵

Professional Islamic Mediation

Each of the preceding methods for dispute resolution has drawbacks, particularly for resolving family disputes. Civil courts are costly, adversarial, and ill-equipped to meet the needs of Muslims who wish to incorporate their religious values into the process. Islamic arbitration, though effective for women seeking Islamic divorces, lacks transparency and may not provide a forum for parties to explore other solutions or to participate in crafting a solution. Furthermore, civil and Islamic courts are not equipped to handle disputes before they reach an adversarial stage, nor can they handle disputes that fall outside the legal realm. Counseling can provide effective means for resolving disputes in the long term by improving family relationships but may be less suited to reaching practical solutions to problems in the short term.

¹⁴³ Saris, 12.

¹⁴⁴ Ibid., p.13.

¹⁴⁵ Macfarlane.

Professional Islamic mediation may fill an important gap in services. I use the term “professional Islamic mediator” to mean individuals or organizations that advertise Islamic mediation services to members of the Muslim community. The term “professional” in this context does not necessarily mean that they accept a fee for their services, although some do. Rather, I use it to distinguish their services from those of an imam or community member who attempts to intervene informally as a third party in a dispute.

Although secular mediation services are widely available in Western societies, they may not meet the needs of Muslim communities. None of the women in Saris’ Montreal study had visited a mediator, in part because the mediators available did not speak their language and were not of the same cultural or religious background.¹⁴⁶ The women also did not understand the difference between the services provided by a professional mediator and the informal dispute resolution provided by their imam.¹⁴⁷ Among American Muslims, there seems to be an interest in professional and confidential Islamic mediation services. In one study of Muslims in Washington, DC, respondents voiced their support for an Islamic model of interpersonal conflict mediation. They indicated a preference for having their disputes mediated by practicing Muslims who were credible and trained in both mediation methods and Islamic law.¹⁴⁸

Othman argues that professional Islamic mediation offers several benefits to Muslim disputants. The emphasis on maintaining relationships in the mediation process is consistent with the value that Muslim communities place on social harmony, and Islamic mediators will be sensitive to the cultural sensibilities of the disputants.¹⁴⁹

¹⁴⁶ Saris, 8.

¹⁴⁷ Ibid.

¹⁴⁸ Abdalla, “Views.”

¹⁴⁹ Othman, 288.

Othman believes that clear standards of practice are a key advantage that professional mediation has over informal mediation conducted by imams or respected community members:

Modern mediation as carried out by trained professionals is tailored to be flexible yet systematic and efficient. By introducing a measure of standardization and scrutiny into the process, Muslims can have greater access to qualified interveners and mediation that operates openly and with accountability.¹⁵⁰

In an attempt to introduce such standards, one scholar, Amr Abdalla, developed a model for Islamic conflict mediation. This model may be applied in a professional setting, although its use is not limited to professional mediation; imams and community leaders could also benefit from training with it. The model “attempts to operate within the broader Islamic worldview”¹⁵¹ and is based on principles of justice, equality, and freedom that Abdalla says are central to the religion. Abdalla does not say that Islamic law has no place in dispute resolution. However, he warns against “entrapment in circles of legalistic interpretations developed centuries ago, which lack the spirit of conflict resolution as a movement for social change.”¹⁵² Abdalla suggests the following principles guide a new model of Islamic mediation:¹⁵³

1. Restoring to Islam its messages of justice, freedom and equality
2. Engaging the community in the intervention and resolution processes
3. Adjusting intervention techniques according to the conflict situation and stages

The first principle entails correcting parties’ misinterpretations of the Qur’an and Sunna that may have led to unjust behavior.¹⁵⁴ Abdalla believes that obstacles to this part of the process include “the intermixture of religious and traditional values, attitudes

¹⁵⁰ Ibid., 288.

¹⁵¹ Abdalla, “Principles,” 151.

¹⁵² Ibid., 151.

¹⁵³ Ibid., 153.

¹⁵⁴ Ibid., 171.

and behaviors”¹⁵⁵ and “selective recall of Qur’anic verses.”¹⁵⁶ It is the role of the mediator, therefore, to promote interpretations of Islamic law that are consistent with broader Islamic principles and to inform disputants when their traditional cultural practices are un-Islamic.¹⁵⁷ Community engagement is also important to the success of the process. Though Abdalla does not outline the exact role of community members, he does suggest that the mediator act as an orchestrator, bringing in influential community members to facilitate an agreement.¹⁵⁸ Finally, Abdalla proposes that the mediator’s role alternate between conciliatory and forceful, depending on the stages of the conflict. The Qur’an “mandated an active role against one party if it transgresses. Once the transgression is brought under control, the third party returns to reconciliation mode.”¹⁵⁹ This may be Abdalla’s answer to the tension between the desire for reconciliation and the primacy of truth in Islam.

CONCLUSION

Although there have been numerous arguments supporting the need for professional Islamic mediation, as well as proposed models for how it might work, nothing has been published regarding its actual practice. Numerous questions remain unanswered: What makes the mediation process Islamic? How do mediators incorporate Islamic law or religious sources into their practice, if at all? How do they view their role in relation to the disputants? What techniques do they use to guide the process? Through interviews with the mediators themselves, this study seeks to answer these questions and fill a crucial gap in our knowledge of this new method of dispute resolution.

¹⁵⁵ Ibid., 169.

¹⁵⁶ Ibid., 170.

¹⁵⁷ Ibid., 171.

¹⁵⁸ Ibid., 178.

¹⁵⁹ Ibid., 179.

Chapter 3: Research Methods

The primary method of data collection for this study was semi-structured in-depth interviews with Islamic mediators. This chapter addresses the recruitment and interview process, as well as methodological challenges encountered during the study.

RECRUITMENT OF PARTICIPANTS

Recruitment of participants proved the single biggest challenge of this study. I originally intended to rely on referrals for recruitment. Snowball sampling, or chain-referral sampling, is a method in which participants from a particular population assist researchers in identifying other potential participants. It is used to identify participants from groups that are not highly visible, often because of social sensitivities surrounding their practices. One of the main challenges of snowball sampling is that the low social visibility of certain target populations—in this case, Islamic mediators—makes starting a referral chain quite difficult.¹⁶⁰ The target population in this study was difficult to identify because the field is relatively new. There may be only a handful of Islamic mediators in the U.S. at this time, and there are not yet any professional associations of Islamic mediators from which to draw. Furthermore, given the importance of informal social networks in Islamic societies, mediators may rely heavily on word-of-mouth to advertise their services.

To identify the initial participants in the study, I used several methods. First, I conducted searches for Islamic mediators who advertised their services online, either on their own website or through an online directory of mediation professionals. This yielded the names of six organizations and individuals. I also searched news articles and

¹⁶⁰ Patrick Bienacki and Dan Waldorf, "Snowball Sampling: Problems and Techniques of Chain Referral Sampling," *Sociological Methods and Research* 10, no. 2 (1981):141-163.

scholarly works on conflict resolution in Islam for names of mediators, and through this method identified three potential participants. I tried also to contact Muslim organizations for referrals, including the National Association of Muslim Lawyers, Karamah: Muslim Women Lawyers for Human Rights, and the Islamic Social Services Association. However, the organizations that responded were unaware of any members offering mediation services.

Through the above methods, I identified nine individuals and organizations offering mediation services to Muslims in Western societies. I obtained contact information for eight of them, and after attempting to contact them via email and phone, I received responses from four. Of these, one said he had only mediated a handful of cases due to lack of demand in his community, and he did not feel comfortable participating due to his lack of experience. However, the remaining three agreed to be interviewed.

Once I had identified my initial participants, I had expected that these mediators had engaged in some type of professional networking with others in their field and could thus refer me to potential participants. However, this assumption proved false. Three of the people I spoke to were unaware of any other person or organization offering mediation services.

I had also hoped that starting the chains with Islamic mediators may help minimize false starts that can occur when the initial referrer does not have a clear understanding of the scope of the research. Because the field of mediation in the U.S. is still not well-established, and the field of Islamic mediation even less so, people may misunderstand the target population to be Muslims who perform any type of conflict resolution. As we have seen, imams engage in informal conflict resolution on a regular basis, as do prominent community members in some Muslim societies. Family counselors who specialize in working with Muslim populations are also likely to address

interpersonal conflicts in their work. I had hoped that seeking referrals from Islamic mediators, who presumably understood the distinction between their work and other types of dispute resolution, would yield referrals to others who meet the eligibility criteria. However, this was not the case. Some of the people I spoke to referred me to people working in other fields of conflict resolution, such as interfaith dialogue, international conflict management, or counseling.

THE INTERVIEW PROCESS

Because the population was so small and participants dispersed throughout the geographic study area (in the U.S., Canada, and the U.K.), most interviews were conducted by telephone. They lasted approximately 30-45 minutes and were conducted in two parts. First, I asked participants questions concerning their views of the field, the processes they use, and religious and cultural influences on their approach to mediation. Appendix A contains a sample interview schedule. I had originally intended to ask them a more structured set of demographic questions, but I found that this information usually came up during the course of the interview. The interview schedule was used only as a general guide, as I wanted enough flexibility to allow participants to focus on the issues that matter most to them.

For the second part of the interview, I presented participants with a scenario describing a hypothetical dispute between two people (Appendix B), a husband and wife who are seeking a divorce and wish to reach an agreement regarding issues such as custody and spousal support. Participants were told that the couple sought to resolve their dispute according to Islamic principles, and I asked the participants to describe how they would conduct this particular mediation, including what type of information they would seek from disputing parties, how they would involve parties in generating solutions, how they would address each major issue, etc. This exercise was intended to

elicit specific information regarding process that might be obscured by more abstract discussions of the practice and to uncover underlying value assumptions held by the mediators. I adapted this scenario from a case study published by a family mediator in the U.S., who said the case was typical of divorce cases she mediated. Though many different types of family disputes are appropriate for mediation, I chose a divorce case because there are Islamic laws governing divorce, custody, and spousal support, many of them familiar to Muslims. Knowing that some of the participants were trained in Islamic law, I was interested to see if they would reference these laws during the hypothetical mediation process. I summarized the case and used Muslim names for the parties involved:

Leila and Ahmad have been married for fifteen years and have come to you to seek your services in mediating their divorce. They have been separated for five months now. They had been separated several years before, but Ahmad returned home after five weeks, following counseling efforts of their imam. This time, however, he has consistently insisted on a divorce. The interaction between the two is tense. Leila has asked Ahmad to attend marriage counseling, but he refused. Now, she says she is resolved to the idea of the divorce if it has to happen, but she says she still does not understand why Ahmad wants the divorce.

Leila and Ahmad have two children, a thirteen-year-old boy and a nine-year-old girl. Ahmad expresses concern that he has seen little of them during the separation, and he is particularly concerned that his son has grown distant since he has been away. Leila counters somewhat defensively that he is welcome to visit them anytime and she has done nothing to prevent that. During the separation, they did not follow a set schedule for exchanging the children. Ahmad simply called when he wanted to see them, although now he is hoping for an arrangement that allows for regularly scheduled visits. He has indicated that he might be interested in assuming custody of the children. However, Leila prefers to keep the children with her and is clearly nervous when Ahmad mentions custody.

Leila is particularly concerned about her financial situation. She has not worked outside the home since the children were born, and she sees herself as a homemaker and a full-time parent. She is not currently employed. Ahmad earns \$90,000 per year at his job. During the separation, Ahmad has been sending her \$650 every two weeks and paying the mortgage on their house. Leila says that it is difficult to support the family on this amount. On several occasions, she says

that she has asked Ahmad for additional money. Twice he has refused, telling her he cannot afford it.

At one point, Leila says that they would not have to deal with all of these difficult issues if Ahmad would just come home. Ahmad responds that she knows that is impossible.

Though the interview style was semi-structured, I attempted to incorporate elements of active interviewing. This approach is articulated by Holstein and Gubrium, who argue that conventional interview processes conceive participants as a “passive vessel-of-knowledge” and that “the interview conversation is thus framed as a potential source of bias, error, misunderstanding, or misdirection, a persistent set of problems to be minimized.”¹⁶¹ By contrast, the active interviewer sees participants as “constructors of knowledge in collaboration with the interviewers.”¹⁶² I wanted participants to help set the course of the interview. Although I did have certain subject areas that I wanted to address in the interview, I tried to give interviewees the chance to speak about what they felt was meaningful about their work. This involved some give and take during the interview conversation.

To analyze the data collected, I transcribed the interviews and identified common themes and key differences among responses. The goal was to identify patterns in how Islamic mediation is viewed by its practitioners and to get a general sense of how it is actually practiced in the field.

WORKING WITH MINORITY PARTICIPANTS

All of the participants in this study were Muslims living in Western societies and thus members of a religious minority group in their country. There are several problems inherent in working with minority populations as an outside observer. Maxine Baca Zinn

¹⁶¹ James A. Holstein and Jaber F. Gubrium, "Active Interviewing," in *Postmodern Interviewing*, ed. Jaber F. Gubrium and James A. Holstein (Thousand Oaks: Sage Publications, 2003), 67-68.

¹⁶² *Ibid.*, 68.

argues that insider minority researchers possess advantages that outsiders do not, specifically “that the ‘lenses’ through which they see social reality may allow minority scholars to ask questions and gather information others could not.”¹⁶³

People in minority communities have developed so many self-protective behaviors for dealing with outsiders, that it is quite reasonable to question whether many real behaviors and meanings are accessible to outsiders of another color. The issue here, again, is not only that minority people would consciously mislead white researchers (though they may well do so), but also that those researchers often lack insight into the nuances of behavior.¹⁶⁴

Irene Donohue Clyne, in her work on educational preferences of Australian Muslim families, found that participants may assign different meanings to the interview process: “Is the interviewer a government investigator, agent of the police, undercover journalist planning television exposure or an academic undertaking serious research? The Muslim community in Australia according to informants has been subject to all of these.”¹⁶⁵ This experience is probably common among Muslim minority communities in many Western countries, which have been subject to negative public scrutiny in recent years. As a result, Muslim participants have reason to distrust the motivations of a researcher from the outside. Research on dispute resolution can be a particularly sensitive topic to discuss with an outsider since it deals with relations within the community. Participants may not feel comfortable disclosing certain information or portraying their community in a certain way.

Clyne attempted to overcome the obstacle of distrust by being “careful to acknowledge [her] outsider status and to ensure that the purposes of [her] research were

¹⁶³ Maxine Baca Zinn, “Field Research in Minority Communities: Ethical, Methodological and Political Observations by an Insider” *Social Problems* 27, no. 2 (1979):212.

¹⁶⁴ Ibid.

¹⁶⁵ Irene Donohue Clyne, “Finding Common Ground: Cross-cultural Research in the Muslim Community,” (paper presented at the International Education Research Conference, Fremantle, Australia, December 2-6, 2001). Australian Association for Research in Education, www.aare.edu.au/01pap/don01569.htm

clear.”¹⁶⁶ She found that people were very receptive to her genuine interest in Islam. She also felt it was important that she acknowledged her own religious beliefs to participants, while trying to be sensitive to Muslim cultural practices, such as standards of dress. Like Clyne, I made an effort to inform participants of the purpose of my study and how its results would be used. This ensured that participation was voluntary and helped build trust between me and the participants. I also gave them information on my own background, letting them know that I had studied Islam for a number of years and was also a mediator, trained in the North American model. In almost all of the interviews, participants were clearly conscious of my outsider status and went out of their way to address negative stereotypes of Islam and correct commonly-held misperceptions. This revealed an awareness of anti-Muslim sentiments in Western societies. Though no one seemed in any way suspicious of my motives or my research, there seemed to be a shared concern that I understand their religious beliefs and portray them accurately.

Another problem with minority research that Zinn explores is the way in which outside researchers may use their status to exploit minority participants for their own professional benefit. The participants receive nothing, and their subordinate social position is reinforced.¹⁶⁷ Clyne addressed this problem in her research with Muslims by sharing her findings with participants and engaging in professional dialogue with Muslim educators.¹⁶⁸ Being a fellow dispute resolution practitioner, I likewise had the opportunity to engage in dialogue with participants who wished to discuss the findings of the study and other developments in the field. I made an effort during the interviews to treat participants as active contributors to the research. I hoped to make the interview process useful to them in some way and took care to ask if they had any questions about

¹⁶⁶ Ibid.

¹⁶⁷ Zinn, 211.

¹⁶⁸ Clyne.

my work. I was pleased to find that all participants were curious about the field and interested in learning more about others who offered mediation services.

Chapter 4: Results and Analysis

This chapter presents the results of my investigation into the practice of professional interpersonal dispute resolution in Muslim minority communities. The first section is an in-depth discussion of Amr Abdalla's model of Islamic mediation. In the second section, I present the results of my interviews with practicing Islamic mediators as individual case studies. Finally, I discuss some of the common themes I encountered in my interviews in an attempt to address my major research questions.

TOWARD A MODEL OF ISLAMIC MEDIATION

Amr Abdalla, a Muslim scholar based in the U.S. has developed the most clearly-defined model of Islamic mediation.¹⁶⁹ Abdalla, originally from Egypt, obtained his PhD in Conflict Analysis and Resolution at a U.S. university and went on to teach and conduct research in the field of conflict resolution. He is not a practicing Islamic mediator; however, an in-depth study of his model is warranted here, since it is the most prominent and comprehensive model currently available and thus has the potential to influence the nascent field of professional Islamic mediation. His experiences in developing the model also shed light on the challenges that the field of Islamic mediation might encounter as it grows.

Abdalla began his work on an Islamic model in the late 1990s, working with a group at the Graduate School of Islamic and Social Sciences (GSISS) in Leesburg, VA, which he described as having "good view of how to balance Islam and modernity." In developing his model, Abdalla sought to fill a need that he saw in Muslim communities in the U.S. for culturally appropriate dispute resolution. He had concerns about existing

¹⁶⁹ This section is based on an interview with Amr Abdalla, conducted July 13, 2009.

practices, such as services provided by imams—“Many imams do their own interventions, but they are not trained necessarily. They use their own instinct and whatever they know culturally to do, and religiously. Sometimes they are effective, sometimes they are not.” Abdalla was also critical of the legalistic approach of Islamic arbitration as he saw it practiced in minority communities:

They are all still going within the orbit of legalistic Islam, they are not making the breakthrough. They are reinforcing the legalistic notion and the notion of the scholar who knows everything and who will know how to answer everything. And for me it's really not effective because...there are social psychological deeper issues that I don't think that just somebody who read the Qur'an or who read books of Imam Shafi'i will know how to deal with them. You need something much deeper than this..... Islamic arbitration, it's the same old stuff. Actually, it's even worse I think because they seem to bring back the same old interpretations that existed 1400 years ago and try to twist things to apply them today. I'm not sure that this is working.

The Abdalla/GSISS Model in Practice

Abdalla's model concentrates on broad Islamic principles and values, although it does provide for the use of Islamic law should the situation call for it. Abdalla elaborated on some of the key principles that differentiated his model from the Western model and made it distinctly Islamic. First, he proposes a role for community in resolving disputes among individuals, a common practice in Islamic societies.

[The Islamic model] overcomes what I think is the highly individualistic element of mediation as we know it in the Western model, or the North American model to be specific...Autonomous, hands-off, let people decide what they want. So the issue of community involvement ... this is one of the tools in the toolbox. Say that you and your spouse have a dispute. But you do have other family members or friends who are close to you, who you trust, who might be able to share with you some ideas and brainstorm with you about how to deal with your issues. I'm suggesting, why should you be closed to this? Why can't we actually encourage parties in the conflict to seek this kind of support from people they trust and they feel close to?

Thus, one of the roles of the mediator in Abdalla's model would be to encourage parties to seek the counsel of trusted friends and family members, either outside the mediation or during a session.

Another key principle of Abdalla's model is an increased level of involvement on the part of the mediator in judging particular actions of the parties involved and encouraging them to observe Islamic values.

In the North American model, if you are confronted with an issue of, say, child abuse, you are going to probably say, "oh, I have to stop here, I'm going to report it," but you are not going to continue. The same if you are doing Islamic mediation. However, I am saying that there are other issues that are also about "no-no's," things that you should not do from an Islamic perspective. And here the mediator has to play more a role of saying "oh, no, you cannot do that." Here, as you said, from a North American approach, that's craziness.

Abdalla described a hypothetical case in which a husband has a drinking problem. In the Western model, the mediator would simply ask if the husband had sought counseling for his problem, without making a value judgment about the drinking. In Abdalla's Islamic model, the mediator would suggest counseling, as well, but would also tell the husband he should not drink, as it is not permitted in Islam. "When they're violating some of those redlines—such as alcoholism, gambling, adultery, abuse—as a mediator, you have to really play a role of trying to restore the religious values to the situation. And that's where I play an active role."

Actively promoting and establishing Islamic value parameters is thus an important role of the Islamic mediator and is another aspect of Abdalla's model that makes it distinctly Islamic. Mediators themselves, however, are not expected necessarily to have training in Islamic law. Rather, if parties wish to apply Islamic law to their dispute, Abdalla suggests that they consult with a legal scholar or take a more egalitarian (and somewhat controversial) approach, which he calls the Shura jury. Abdalla envisions the

Shura jury as a group of volunteers from the community who would take courses in Islamic law, learning how to research legal questions, and serve as a consultative body for parties in a dispute. The mediator would keep the identities of the parties confidential in referring their question to the Shura jury, and parties would choose whether or not to implement the decision of the Shura jury.

Interestingly, Abdalla does not argue that every tool of Islamic mediation (such as an activist mediator, or coaching on Islamic values) is applicable to every conflict. There are even situations when he believes the Western model would be adequate for resolving disputes between Muslims. In choosing which tools to apply to conflicts, Abdalla argues that the mediator must first assess the type of conflicts present in a particular dispute, which he divides into four main categories (Table 2). When the conflict deals with the violation of particular Islamic value parameters, the active mediator approach is applicable, in which the mediator will reinforce correct behavior. If the mediator is dealing with a dispute involving legal issues, he or she might consult an Islamic scholar or the Shura jury. If the conflict revolves around cultural differences, the mediator will work to increase cultural awareness and understanding. Finally, if the dispute is the result of a conflict of basic needs and interests, then a mediator encourages the sides to express their interests and find common ground.

Table 2: Mediation Techniques for Different Types of Conflict

DISPUTE TYPE	Value Parameters	Matters of Islamic Law	Cultural conflicts	Needs and interests
APPROACH	Reinforce Islamic values	Shura jury consultation	Increase cultural awareness	Interest-based mediation

According to Abdalla, this fourth category of needs and interests encompasses the majority of disputes among Muslims. Having read the hypothetical divorce case

presented to the study participants, Abdalla commented that, in his opinion, it fell in this category, to which a mediator might successfully apply elements of the Western model.

The majority of conflict issues in the Muslim community are about things that don't necessary violate parameters, that don't necessarily have a legal issue, don't even have a cultural layer....For me, this is a pure, interest-based model that you can apply Chris Moore's stuff to. This is where you can use the typical [Western] mediation: So tell me what is your interest? How can we find common ground, how can we satisfy both needs? The basic element of the [Western] model is about "I understand your underlying needs, understand that other person's underlying needs." And then find a creative way so we can satisfy the two parties' needs simultaneously and we can live with that and coexist peacefully.

So there are significant overlaps between Abdalla's model and the Western model of mediation for family dispute cases. However, when parties shift to questions of Islamic law, or the mediator sees the potential to involve family members, these represent tools that an Islamic mediator can draw upon as the situation dictates.

A final important component of Abdalla's model is a return to broad Islamic principles, such as peace and justice, as opposed to focusing on minor legal details. In particular, Abdalla cites Qur'anic injunctions encouraging compassion, which he feels have been underemphasized by Islamic jurists. The purpose of the Islamic mediator, therefore, would be to encourage compassionate behavior by reminding parties that the Qur'an dictates compassion and that God is aware of how they behave toward each other.

Islamic mediation will try to promote a notion of compassion to the other....There are words in Arabic called *ihsan* and *ma'arouf*. Those words are about kindness and decency. It is amazing how those words, kindness and decency, are mentioned often, especially in the middle of [Qur'anic] verses talking about family disputes like divorce, custody cases, alimony cases.... The emphasis is that the parties have to follow this mode of behavior of kindness and decency toward the other.... A big problem with the [Islamic] jurisprudence we had is that jurisprudence, for 1400 years, ignored that element.

Challenges to Implementation of the Abdalla/GSISS Model

On the question of where the model has gone since the 1990s, Abdalla noted with some regret that progress on the project had stalled in recent years, for a number of reasons. Following September 11th, 2001, Abdalla said the Graduate School of Islamic and Social Sciences (GSISS) became the target of “harassment by the government, for reasons that are beyond me... because the group working there and the leader of that organization had nothing to do with any kind of violence or hatred. To the contrary, it was all about building bridges and reaching out. So it almost closed down... We no longer had the venue to work on this.”

Another major challenge, according to Abdalla, has been limited support for the project among Muslim communities:

I would say that also there was not a lot of support from the community. The Muslim community in the US seems to be very aware that they have a lot of problems. You wouldn't believe how many problems they have in their mosques, in all levels. And you talk to them, they say, “Oh yes! We so much would like to have some kind of training on this, it would be very helpful,” and so on. But then when you say “let's do it,” you find hesitation.

While mosques have been willing to host trainings on the model, they have generally been unwilling to pay for these trainings, raising the question of sustainability of a fee-based dispute resolution practice. Some Muslims in the U.S. have also been resistant to adopting new ways of approaching conflict resolution. Abdalla reflected on particular time that a mosque board member had become interested in the idea and invited him to conduct a training:

I remember that it got to a few days before the training, and he called me at my house and said that the rest of the board members became a little bit uneasy when they saw that we were doing this training using role plays, and they thought that that was “Western stuff.”... And they actually decided not to go with the training, they wanted lectures. All the traditional ways. [laughing] It was a disappointment.

Abdalla noted that acceptance of this model will require change on a large scale within Muslim communities. Though this is a challenge, and progress on the model has suffered setbacks, Abdalla remains hopeful that it will be implemented in the future.

We want to educate the community, we want to develop a cadre of trained people.... I'm talking about transformation on the structural level and cultural level. So that's what we're trying to do, go way beyond just resolving this one conflict, let us change the whole community. It was a big dream, and I hope it comes back.

CASE 1: AN ISLAMIC MEDIATION/ARBITRATION SERVICE

Canada has witnessed controversy in recent years over the use of Islamic arbitration to settle family disputes among Canadian Muslims. Mahmoud,¹⁷⁰ who offers Muslim mediation and arbitration services in Ontario, was a student of the late Syed Mumtaz Ali, founder of the Islamic Institute of Civil Justice and a leading figure at the heart of the conflict. Mahmoud works in a mediation practice that handles non-Muslim mediation cases, as well. In Toronto, parties are required to attempt mediation before bringing civil suits to the courts. Mahmoud is registered with the court and accepts court-referred cases. However, he also advertises Muslim mediation and arbitration services, and handles about five cases per month. He is trained in mediation and arbitration but has also studied Islamic law.

Mahmoud immigrated to Canada from the Caribbean, and he said that his family came originally from Afghanistan. He works closely with an imam from Africa, who will sometimes assist with a mediation/arbitration. Both are of a different cultural background than most of the people who use the service, who come mostly from Arab countries, Pakistan, and India. However, Mahmoud believes this difference in cultural background is an advantage because people are trying to avoid the type of traditional

¹⁷⁰ Name has been changed. Results in this section based on phone interview conducted on July 20, 2009.

approach that religious scholars from Islamic societies might use. “Because we’re not Pakistani, we’re not Middle Eastern, they trust us more ... We don’t walk around with beards.”

As is the case with the Sharia Council in the UK and other avenues for Islamic arbitration in the West, Mahmoud’s arbitration practice consists mainly of women seeking divorces from their husbands. In cases such as these, the men are refusing to grant their wives the *talaq*. Rather than just having an arbitration practice, however, Mahmoud starts with mediation. From his perspective, the purpose of the mediation is usually an attempt to convince the man to grant his wife the *talaq* so that it is not necessary for her to resort to arbitration to obtain a *khul’* divorce. When asked if he had ever helped couples reconcile, he said “I’ve only had about two cases [in which] they actually resolved the issue, but they ended up back in my lap a year later in arbitration. It didn’t work.” Because most of his cases are women trying to obtain an Islamic divorce, it may be that the Muslim community sees him more as a practitioner of Islamic law than a mediator in the Western sense of the word. However, he does distinguish between the mediation phase and the arbitration phase (in which he renders a judgment according to Islamic law):

We start with mediation because the Qur’an tells you if you have a problem, each party presents an arbitrator and you try to resolve the problem. But with keeping in that law because in law, in Muslim law or civil law, the spirit of the law triumphs the word of the law. The Qur’an tells you an arbitrator—well, today we have mediation *and* we have arbitration. And in almost all cases, we need to do the mediation first before you go into arbitration.... And when the situation cannot be resolved in mediation, then we go into arbitration.... When they are trying for the *khul’*, we try to get a *talaq* from the man. That’s the process, that’s the procedure. If he fails to do that, we have to go into the arbitration. The mediation stops when he refuses to cooperate.

He sees his services as important to the community, since they allow women to leave an unhappy marriage. In many of his cases, the women have been abandoned or

abused by their husbands. These cases are most often from lower socioeconomic classes. The middle class disputes Mahmoud sees are often more amicable: “the guy still isn’t happy but he will come and he would give her the *talaq*.” In almost all cases that end up in arbitration, he grants the woman a *khul’*. Since the beginning of his practice five years ago, he has only denied it once.

Typically, Mahmoud’s cases begin when a woman approaches him with a problem. He conducts a routine intake, taking down relevant contact and background information and explaining the mediation/arbitration process. Then, he contacts the husband, asking him to come in for mediation. In the mediation, each party is given the opportunity to tell his or her side of the story. In this respect, Mahmoud says his approach is similar to the Western style of mediation.

As a mediator you try to eliminate ... the smallest things so that they can see some progress being made, until you get the big issues. And sometimes they can see that with the small issues, “really, I was a jerk, I was wrong.” So they start accepting responsibility, so that when you get to the big issues, it’s easier to confront them. You basically do regular [Western] mediation and you get all the facts.

With the hypothetical case of Leila and Ahmad, Mahmoud was first interested in knowing the cultural background of the couple, saying that background has an impact on the nature of the problem. For example, he said, Indian and Pakistani immigrants are used to having power rest solely with the man. When he senses this type of dynamic, he tries to re-orient the way the man thinks, which is what he proposes in the hypothetical mediation.

So he doesn’t want to go for counseling, and she’s insisting on counseling. So I would like to know why he doesn’t go for counseling. Is it because he thinks that it’s a disgrace or a shame? If so, on who is it a shame? Is it a shame for his friends, knowing that he’s going for counseling, and why is it their business? This is a private family matter. And you see, I’m not an imam so I can talk to them much more freely than an imam, I can actually sometimes almost insult

them. Because it takes that to make these guys understand what this is about. This is about your family, not your community, not your village.

At this point, he would still try to keep the two together. He finds sometimes that giving the men a reality check, encouraging them to consider the repercussions of divorce can be effective in getting the men to engage in the mediation process.

I start giving him options, I start bringing him to reality. Sometimes these guys are so wrapped up in nonsense and stupidity, they don't see the reality of the situation. This is where you have to start pointing things out to them": Okay, you know that if you sell the house, she gets 50% of the profit; did you know that?" Because in Pakistan, they sell the house and the woman is on the street.... "So I think that's a good idea, if you want to sell the house, she can have \$100,000" (I'm using some psychology now). "She can have \$100,000 she can buy a very nice condo and she's still a young woman, maybe there's somebody in the future for her." I start frightening him, you know? And he starts thinking. And then you find what is the real reason, what is the real problem. And then they start talking.

In this case, after attempting to bring the husband back to reality, Mahmoud would give them a week to think things over, providing a "window of opportunity where they take it upon themselves to act. So if in a week, he doesn't do it, he's not going to do it in two weeks or a month." Mahmoud noted that in Islamic law, women do not have a choice about whether to accept or reject a divorce initiated by the man. Thus, if the man continued to insist on divorce, Mahmoud could not stop it. In that case, he said he would invite the woman back for a private session and talk to her about her options for the future. He would also refer her to legal counsel to deal with property issues and ensure she receives what she is entitled to under law.

On the subject of what makes his mediation process Islamic, Mahmoud said he would often ask an imam to join the mediation session. They would quote Qur'anic passages pertaining to marriage and family issues, the purpose being to encourage the man and woman to fulfill their duties and responsibilities to each other as outlined in the Qur'an. So, if a man were insulting his wife, the imam would point out that doing so

violated Islamic principles, and he would ask the man how he could call himself a practicing Muslim while doing something that was forbidden.

Syed Mumtaz Ali, who spearheaded the push for Islamic arbitration tribunals in Ontario, passed away in July 2009, and Mahmoud said that he and others plan to continue Ali's work in an effort to expand Islamic mediation and arbitration services to other parts of Canada.

CASE 2: MUSLIM MEDIATION SERVICE

In 2003, a group of imams and community members in one London neighborhood approached a local mediation organization, Conflict and Change, to ask if they could provide services for Muslims in the area.¹⁷¹ The imams were concerned that they lacked both the time and the skill to deal with the many family disputes that they saw in their congregations. The Muslim Mediation Service (MMS) was created to meet this need. One staff mediator, Kareema,¹⁷² who has worked for the organization since its inception, described their approach to mediation:

Our role is just to try and find ways to solve their disputes by talking to one another, by listening to one another and understanding one another.... It's really to empower families to find their own solutions... Because once you start going down the legal route, sometimes it can get quite messy.

Initially based in Conflict and Change, which had been offering mediation services to the local community since 1984, MMS soon spun off to become an independent organization. There were two main reasons for this change. First, there was distrust between Muslims and non-Muslims in the community, and Muslims were hesitant to approach a non-Muslim organization like Conflict and Change and suspicious of its motives. By establishing an independent organization, MMS was able to gain the

¹⁷¹ Information in this section is based on a phone interview with an MMS mediator, July 22, 2009. See also the MMS website, www.muslimmediation.org.uk

¹⁷² Name has been changed.

trust of the local community and reach out to people that would have been distrustful of a secular organization. Second, MMS sought to incorporate Islam into its mediations. Since Conflict and Change itself did not have a religious orientation and served people from many different faiths, it was easier for MMS to become independent. However, MMS remains affiliated with Conflict and Change, maintaining an office in the same building and sending its mediators to Conflict and Change trainings. The two organizations also cooperate on projects, such as “Community Conversations” in which local people from different cultural backgrounds meet to build positive relationships.

MMS is small and run mostly by volunteers, though there are two part-time and one full-time staff members, all of whom are Muslim. Volunteer mediators complete an eight day Introduction to Conflict Management course offered by Conflict and Change and take monthly continuing education courses offered on evenings and weekends. However, despite its small size, the organization has an active caseload of two to three cases per week. There is no set limit on the number of sessions that clients may attend, and all services are free to the community. Types of cases vary. The organization’s website notes that MMS has been “actively involved in conflicts between neighbours, individual/personal issues, family members, marital discord, divorce arrangements, workplace conflicts, community issues and more.”¹⁷³ MMS advertises that its central aim is “to bring families together by promoting better communication... We help people to listen to each other's point of view and find a way forward together. Problems between: husband and wife, parents and children, brothers and sisters, neighbours.”¹⁷⁴

¹⁷³ Muslim Mediation Service homepage, <http://www.muslimmediation.org.uk/> (accessed August 11, 2009).

¹⁷⁴ "Frequently Asked Questions," Muslim Mediation Service, <http://www.muslimmediation.org.uk/faqs.php> (accessed August 11, 2009).

MMS is a nonprofit organization, funded through individual donations and grants from charitable trusts. Staff and volunteers publicize its services at local events and forums, sometimes appearing on local radio and television shows and handing out leaflets. However, the main method of advertisement remains word of mouth in the community. One of the main successes that staff have noted is an increased perception among Muslims in the community that they can benefit from talking to a third party about their problems:

When we first started, especially in a lot of the cultures we dealt with, people didn't like the idea of going to someone else to talk about their problems. It was really seen as "oh, now, we can't go to another person," it's either the imam or we have to stay silent or we stay within our own family.... So we've kind of started to break down those barriers and explain that yes, it is okay to go and seek help.

MMS itself does not get involved in judging the legal aspects of cases, although clients will sometimes request rulings. Though MMS does not offer Islamic arbitration, staff will refer clients to the informal Islamic court system if they wish to have an Islamic divorce, for example.

With that kind of scenario, we would actually try to talk to both parties and try to find further what's going on. And if they did decide to divorce, then we'd work on how we can resolve it in the best way, where you're still talking with each other, still having good relations with each other..... If needed, we would explain what the divorce process is, but we would say that they have to go through either the Sharia Council or the main courts to actually process the divorce.

Kareema explained the mediation process, which is similar in many respects to the secular Western model. In addressing the hypothetical scenario, she said she would start by addressing the issue of whether they wanted the divorce.

With this kind of case we would talk to both parties separately to find out what's going on, because you're got that they had separated several years before and then they got back together. And it would be interesting to find out what actually made the person come back and try and see if there is anything positive in the relationship and focus on that. If there is even the slightest chance of them trying to reconcile, then we would try and work on that.

However, if it is obvious that the parties cannot or do not wish to work out their differences, then Kareema said that they would begin addressing the main issues in the divorce while trying to preserve good relations between the couple.

If it's definitely finished, then putting the focus onto the children, if you've got children. Let's focus on the best way to proceed for the children and if you are going to go down the divorce route, let's see if there is a way that we can keep the relationship good.... Is there a way that you can try and resolve it so you're not fighting over the children? Because if you go down that route, again, it's going to get messy and your children are going to get hurt. What do you feel is the best way to try and resolve your situation?

It is clear that great importance is placed on empowering the individuals in the mediation session to reach their own solutions and helping the disputants to understand each other. This was a common theme throughout the interview. In dealing with the dispute over financial support, Kareema said:

We wouldn't actually make the agreement on how the finance side would work. There could be reasons why he is not giving as much money, it could be that he is having financial difficulty. Then, again, it's trying to help them to come up with agreements together, and for her as well explaining how she needs the money and who she needs it. And sometimes it's just both sides understanding where they're coming from, what their situations are, how difficult things are and just again really focusing on them talking to each other and trying to help one another.

As in the Western model, the mediator in this process does not take an active role in guiding clients toward a particular solution but rather facilitates communication and guides the process.

We don't impose our beliefs or anything like that. People are free to walk out, we don't force people to come in. The decision is really in the client's hands to try and find ways to resolve it.

As with Western mediation processes, a perceived benefit of the MMS process is that parties have reached an agreement of their own volition and are thus more likely to make that agreement work.

We do occasionally write down what you've agreed and then we'll give it to both sides, but I think where we're different is that the agreement isn't actually legally binding, it's actually something that they've agreed themselves and they're going to try and work towards. The power is still in their control. If they want something that's very legally binding, they would have to go through the courts.

Because of the clear similarities to the Western model, the question remains of what makes MMS services Islamic in nature. According to its website, MMS "aims to promote conflict resolution based on the Islamic values of fostering unity, peace and understanding amongst Muslims, as well as the wider community."¹⁷⁵ Kareema said that MMS mediators will sometimes incorporate religious elements into the process, referencing Islamic values in order to encourage people to work together amicably.

Often we find when people come to us they actually do want that religious element.... So sometimes you might bring in parts of Islam that encourage good communication, for instance.... You can use religion in that instance of how the Prophet Muhammad encouraged people not to break the ties of kinship. Even if someone is bad to you, go back with them ... So sometimes that works as well, if you bring that religious element and just remind them of the importance of keeping good relations.

It seems, then, that Islamic laws or values are not formally incorporated into the process but may be used to encourage parties to maintain good relations and reach a settlement. Kareema also noted that a shared faith and cultural background are important in helping parties to trust the mediator and to feel comfortable talking about their problems with him or her.

In the future, the Muslim Mediation Service hopes to expand its services to areas beyond London. They have already had requests for services from other parts of the UK. They have also begun working with civil courts, which have started to refer cases to their organization for mediation, and there are plans to partner more with the Sharia Council to provide Islamic rulings should clients wish to apply Islamic law.

¹⁷⁵ Muslim Mediation Service homepage, <http://www.muslimmediation.org.uk/> (accessed August 11, 2009).

CASE 3: AN AMERICAN MUSLIM LAWYER

This final case in this study focuses on a Muslim lawyer who has experience mediating family disputes in the Muslim community. However, unlike the other participants, he does not consider his practice “Islamic.” I included this case to examine the differences between Islamic mediation and mediation services that target the Muslim community, but which are not strictly religious in nature.

Sinan¹⁷⁶ is an American Muslim living in California who started a legal practice in the mid-1990s. Though he had not intended to serve mainly Muslims, he found that Muslim clients comprised about 40% of his caseload, which dealt mostly with family issues. Typical dispute cases included divorce, child custody, child support, will-planning, and estate drafting, and most of these clients became aware of his practice through his activities in the Muslim community. He felt that Muslim clients were more likely to be comfortable with someone from a similar background.

As you’re probably aware, even in general society, a lot of folks are very suspicious of lawyers and very hesitant to trust lawyers so having had somebody who was very active in the youth group at the Islamic Center and then served on the board of the Islamic Center of Southern California, just very active in the community, folks knew who I was. So if somebody had a problem, they would contact me for assistance.

In the majority of cases, Sinan represented only one of the parties in a dispute, but he did have the opportunity to mediate 10-15 cases during his active practice. In addition to his law degree, he took some continuing education courses in mediation. Though he catered to the Muslim community in his area, Sinan did not advertise his services as being “Islamic.” In talking about his experiences, Sinan emphasized the practicality of his Muslim clients, who approached him with specific issues (custody, divorce, etc) and

¹⁷⁶ Name has been changed. This section based on interview conducted July 15, 2009.

expected specific results. This practicality extended into family cases, and he said that Islamic law was rarely mentioned.

Essentially, it was a matter of understanding the interests of either side, explaining to them what was and was not doable under California law, and very rarely did something come up where somebody would say, “well, under Islamic law, a 15 year boy would go here and a 9 year old girl would go there.” That didn’t really come up in our conversations.

Although his family disputes did not generally involve religious issues, Islamic law did occasionally come up in the process of will-drafting, when clients might refer to Islamic law in terms of how much of the estate to leave to each child. Sinan had an arrangement with a local religious scholar to consult on such matters. However, clients usually did not bother to consult the scholar, thinking they understood the law well enough themselves.

With regard to the hypothetical scenario, Sinan focused on the importance of ensuring that agreements could be legally enforced in state courts. For example, if a couple approached him regarding a dispute over child support, as in the hypothetical case, he would explain to them that California has a formula for calculating child support payments.

If either couple came to me and wanted to mediate, I would advise them on the use of that, because that’s enforceable in California courts. No other formula is enforceable in California courts, unless there is an agreement and it meets the minimum....One of the overriding concerns in writing settlement agreements is to make sure that it’s enforceable in a California court....A lot of times imams will negotiate things for couples, not realizing that what they’re negotiating is not enforceable in a court, and so it is one of the pitfalls. Imams play an important role, but sometimes when they’re not educated on what the legal requirements of an agreement are, they can run into problems.

In terms of custody, another issue in the hypothetical case, Sinan similarly referred to California law, explaining that courts would award custody based on the best

interests of the child and that frequent and continuous contact with both parents was considered in the best interests.

It is clear from the interview with Sinan that he did not see his role as being religious—he did not address issues of Islamic values or practice Islamic law. Rather, he provided them with a venue where they could bring their case to someone from the same background, who had a trustworthy reputation in their community, and who could ensure that their agreement was consistent with the law of the society in which they lived. According to Sinan, this service was crucial for Muslims living in the West.

They realized that in order to have an agreement that had any value, it had to be drafted by a lawyer.... I would get cases all the time where they went to the imam, and there was an agreement, and one side broke the agreement. And I would get the other side coming to me and saying “how do I enforce this?” And my position in evaluating these cases, in most cases, was that they’re not enforceable. So it leaves this concept of Islamic jurisprudence being implemented really only to the extent that the [Muslim] community could enforce those agreements, because the society would not enforce them.

ANALYSIS

These cases illustrate the breadth of practice among professional Islamic mediators who work in Muslim communities. In the following analysis, I examine some of the themes that emerged in the interviews.

What Makes the Mediation Process “Islamic”

The question of what made the participants’ practice Islamic had multiple answers. For the Muslim Mediation Service, the religious element was somewhat nebulous. It sounded as though Islamic values were referenced at times during the process, but mainly to encourage parties to maintain an amicable relationship rather than to judge their behavior and attempt to correct it. Amr Abdalla placed more emphasis on clearly incorporating Islamic values into the process and did see a place for instructing

parties on correct behavior based on these values. Neither Abdalla nor MMS incorporated Islamic law into their vision or practice of mediation. Abdalla actively hoped to steer dispute resolution away from legalistic arguments and toward more broad application of Islamic principles. MMS did not make use of Islamic law in its process. This may be because it was originally based in a secular organization and continues to receive its training from that organization. It is not clear that MMS has a particular objection to use of Islamic law to resolve disputes, as its staff will refer parties to informal Islamic courts if they want Islamic legal advice.

In contrast, Mahmoud, who practices mediation/arbitration, referenced Islamic values and prescribed behavior with the clear intent of steering parties toward a particular agreement or behavior. Mahmoud said he sometimes brought in an imam to quote verses in an effort to convince the husband to alter his behavior towards his wife. In Mahmoud's case, also, Islamic law was mentioned as relevant to the process and was used in the process as a method for resolving the dispute. He routinely makes rulings in divorce cases based on Islamic law. Regarding the hypothetical case, he noted that women, in Islamic law, would not have the option of accepting or rejecting the *talaq*, and that this would guide his handling of the case. Mahmoud had received religious training, which likely resulted in his more legalistic approach to dispute resolution.

It was interesting to note that participants found elements of the Western model useful to their practice. MMS uses the Western model in its entirety, with only minor modifications. Abdalla also advocated use of the Western model as a base for addressing interest-based disputes such as the hypothetical divorce case presented in this study. Mahmoud practiced Western mediation in addition to Islamic mediation, and he used aspects of the Western model, such as the intake procedure, in his Islamic practice. Furthermore, both Mahmoud and MMS stress the confidentiality of their services, which

is an important standard in the Western mediation profession. It is not surprising that Islamic mediators in the West would borrow from the Western model, given that it is the most widely-used model in Western societies and the one in which they received their training. Western mediation has also been developing as a profession for the past several decades, so it makes sense that Islamic mediators, rather than re-inventing the wheel, would adopt existing techniques that they felt were compatible with their new approach.

The case of Sinan highlights the differences between Islamic mediation and secular mediation that is practiced by a Muslim. Sinan was the only participant in the study who did not consider his practice “Islamic,” though Muslims comprised a large part of his clientele. He was simply viewed as trustworthy in the community and possessing basic knowledge and understanding of the religion. He did not incorporate Islamic values or Islamic law into the mediation process, although he did make referrals to religious scholars if his clients wanted to apply Islamic law (though most did not).

The Role of the Mediator

The role of the mediator as an active, sometimes forceful participant in the mediation also varied among the interviewees. Mahmoud advocated the most forcefulness in the mediator’s role. He thought it important to steer parties toward a particular decision that he believed was the correct one. Abdalla’s model similarly calls for more active mediators in the process, particularly when they were correcting behavior.

MMS, on the other hand, used the more Western approach of placing the power solely in the hands of the parties involved, emphasizing the need for individual ownership of the solutions reached. At most, MMS mediators would exert gentle pressure to persuade disputing parties to continue the process and reach an agreement.

Cultural Considerations

The cultural background of both the mediator and the client was of varying importance to the participants. Mahmoud found the client's country of origin very important in his initial assessment of the hypothetical case. He made assumptions about what might motivate his clients' behavior based on their cultural background (e.g. Pakistani immigrant men are used to having the power in the household) and used these assumptions to guide his questioning. He also finds it necessary in some cases to explain to people that some behavior, while perhaps culturally appropriate, was not religiously appropriate. This is consistent with Abdalla's model of Islamic mediation, which sees emphasizing religious values over cultural practices as a central function of the mediator. Kareema of MMS, on the other hand, did not find the country of origin important in guiding the process. However, she was aware that cultural background of clients might affect their communication styles and their perception of mediation, and she seemed to find it important to be sensitive to this during the process.

The cultural background of the mediator was also an interesting issue. Mahmoud finds that his own background, different from most of his clients in terms of national origin, is a positive thing because it frees him from some of the negative associations people may have had with aspects of their own culture. For MMS, however, shared cultural background of the mediators and their clients was seen as an advantage, as it made clients more comfortable with the mediators and the mediation process.

Types of Cases Mediated

There was a clear difference among the mediators in terms of the types of cases they saw. Mahmoud's practice targets women seeking divorces whose marriages are already failing. The purpose of his service, therefore, is less to save the marriage

(although he does make some effort to do this) than to ensure that the divorce, if it is to happen, happens as civilly as possible and according to Islamic law.

MMS has a more varied caseload. MMS mediators do handle divorce cases, but they advertise themselves as a service for keeping families together. In this respect, the services they offer are quite similar to the type of marital mediation that has gained popularity in Western societies in recent years. The difference in types of Islamic mediation services offered by the mediators in this study indicates that there are different needs in Muslim communities that can be filled by different types of Islamic mediation.

Organization and Funding

The mediators in the study package their services quite differently. Mahmoud runs a fee-based private practice, although he does charge on a sliding scale for people who cannot afford his services. It should be noted, though, that his Islamic mediation practice is part of a larger practice that also provides secular mediation services to the general public. Given Abdalla's experience with a lack of interest in fee-based conflict resolution services, it is unclear whether there would be sufficient demand to make a stand-alone Islamic mediation practice financially sustainable.

MMS, on the other hand, is a nonprofit organization funded by grants and donations and staffed almost entirely by volunteers. The success of the organization indicates that people are willing to use mediation services if they are offered free-of-charge and also that private charities are willing to fund such services.

Chapter 5: Conclusion

The aim of this research was to describe the actual practice of professional Islamic mediation in Western societies and to explore its potential benefits for members of Muslim minority communities. The case studies presented here of Islamic mediators shed light on what is happening in the field. The results of the study indicate that there is wide variation within the field of Islamic mediation in several key areas. First, the “Islamic” component of the mediation was different among practitioners. For one mediator, it involved the application of Islamic law and pressuring parties to adhere to religious dictates. For another mediator, it was more important to emphasize broad Islamic values of kinship and reconciliation. The goals of the mediation were also different, with one practitioner focusing on facilitating divorces using Islamic law and another on keeping families together through improved communication.

The diversity of practice in the field of Islamic professional dispute resolution services is likely a positive thing for Muslims living in the West. Different types of services may fill different needs. A couple going through a divorce, for example, may wish to use a service like the Muslim Mediation Service to help maintain a civil relationship while working through tricky issues such as finances and child-rearing arrangements. If they decide to attempt reconciliation, MMS could help them develop a plan for improving their family life. If they wish to obtain an Islamic divorce, or they want to seek a ruling on a particular issue of Islamic law, they could use a service such as Mahmoud’s mediation/arbitration. Because they are also under the jurisdiction of a civil court system, a Muslim lawyer like Sinan would be able to guide them through the process to ensure that any agreement they reach during mediation would be enforceable by the courts. Thus, Muslims could ideally select from a menu of services to work

through their disputes. However, given the small number of active practitioners scattered across the globe, the availability of such options is a long way off.

In addition to highlighting the potential positive impacts that existing Islamic dispute resolution services may provide, clear challenges in the field still exist. There seems to be little communication among practitioners. Most interviewees had no idea that there were other dispute resolution professionals practicing in Muslim communities. Because practitioners are not in communication with each other, there is little discussion of the benefits and drawbacks to particular approaches to dispute resolution (e.g., Abdalla's model v. mediation/arbitration) or different ways in which Islam may be incorporated into the process. There are also few trainings available. Most people I spoke to in the course of my research had either studied Islamic law or secular dispute resolution (or sometimes both).

The biggest limitation of this study is its small sample size. Although the population of professional Islamic mediators is probably quite small, it is still difficult to draw general conclusions about it from just a handful of cases. The case studies here indicate variation within the field in terms of how Islamic mediation is practiced. The study provides detailed description of various models of practice, but it is still unclear how many mediators operate according to each of these models.

The results of this study highlight areas that could benefit from further research. First, Abdalla mentioned that there was limited support for conflict resolution training among Muslim communities in the U.S., raising the question of whether or not Muslims in the U.S. truly need these services. Further studies may be necessary to elucidate opinions on this matter, focusing on what type of services Muslims in different communities think would best serve their needs. The present study has demonstrated a

range of possible options for professional dispute resolution services that participants could evaluate and build upon.

Since preliminary studies seem to indicate an interest in professional dispute resolution services, it is possible that there simply needs to be a more effective way to communicate the potential benefits of Islamic mediation. The Muslim Mediation Service, which uses a model similar to Abdalla's, has a very active practice and has been able to market its services successfully to Muslims in the UK. An in-depth organizational case study might reveal how they achieved their success and produce a set of best practices to inform practitioners in other countries.

Finally, it is important to assess the effectiveness of these services. Though practitioners may measure success rates by number of cases mediated or number of agreements reached, no studies have been published regarding the impact of these mediations on the lives of the people who use the services. Though such a study would be difficult given concerns for privacy, it is nevertheless necessary to determine whether the mediation has satisfied their needs and to identify potential areas for improvement in its practice.

Appendix A: Sample Interview Schedule

Demographic information

- Education, training, licensure
- Cultural background
- Number of years practicing mediation
- Is practice local or national?
- Languages spoken; languages used in mediation
- Other mediation services offered
- Number of cases mediated – All types of mediation
- Number of cases mediated –Islamic mediation

What makes Islamic mediation “Islamic”?

- What do you think differentiates Islamic mediation from other types of mediation?
- Does Islamic law play a role in your mediation? If so, how?
- Do sacred texts play a role in your mediation? If so, how?
- Do broad Islamic values play a role in your mediation? If so, how?

How is Islamic mediation practiced?

- What types of disputes do you commonly mediate?
- How do you identify clients?
- What are the main stages of the mediation process?
- Do you think that your culture of origin influences your mediation style in any way?
- How are services funded?
- Role of mediator in local Muslim community and relationship with leaders

To what extent has the field of Islamic mediation been professionalized?

- Do professional organizations exist?
- Do licensure requirements for mediators exist in your state?
- What types of training are available?
- How do you evaluate your performance?
- Do you interact with U.S. court system?
- Are efforts being made to promote and develop the field?

Appendix B: Mediation Scenario for Interview

Leila and Ahmad have been married for fifteen years and have come to you to seek your services in mediating their divorce. They have been separated for five months now. They had been separated several years before, but Ahmad returned home after five weeks, following counseling efforts of their imam. This time, however, he has consistently insisted on a divorce. The interaction between the two is tense. Leila has asked Ahmad to attend marriage counseling, but he refused. Now, she says she is resolved to the idea of the divorce if it has to happen, but she says she still does not understand why Ahmad wants the divorce.

Leila and Ahmad have two children, a thirteen-year-old boy and a nine-year-old girl. Ahmad expresses concern that he has seen little of them during the separation, and he is particularly concerned that his son has grown distant since he has been away. Leila counters somewhat defensively that he is welcome to visit them anytime and she has done nothing to prevent that. During the separation, they did not follow a set schedule for exchanging the children. Ahmad simply called when he wanted to see them, although now he is hoping for an arrangement that allows for regularly scheduled visits. He has indicated that he might be interested in assuming custody of the children. However, Leila prefers to keep the children with her and is clearly nervous when Ahmad mentions custody.

Leila is particularly concerned about her financial situation. She has not worked outside the home since the children were born, and she sees herself as a homemaker and a full-time parent. She is not currently employed. Ahmad earns \$90,000 per year at his job. During the separation, Ahmad has been sending her \$650 every two weeks and paying the mortgage on their house. Leila says that it is difficult to support the family on this amount. On several occasions, she says that she has asked Ahmad for additional money. Twice he has refused, telling her he cannot afford it.

At one point, Leila says that they would not have to deal with all of these difficult issues if Ahmad would just come home. Ahmad responds that she knows that is impossible.

This scenario has been summarized and adapted from Stephen K. Erickson and Marylin S. McKnight Erickson, "A Typical Divorce Mediation Case," in *Family Mediation Casebook: Theory and Process* (New York: Brunner/Mazel Publishers, 1988), pp. 48-81.

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